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DATE	PROCEEDINGS	Date Ord Judgment
3-27-63	Complaint filed,	
3-27-63	Stipulation of counsel as to service of papers in this district filed,	
3-27-63	Motion for preliminary injunction filed, noticed for hearing Apr.25th,9:30	
3-27-63	Summons issued, with 7 copies of summons, complaint, and motion for preliminary injunction, with notice of hearing attached, (Summons and copies delivered to Marshal on 4-1-63)	
4-5-63	Summons returned executed,	
4-23-63	Motion to dismiss filed by defendants,	
4-24-63	Affidavits of MRS. OLLIE MAE DAVIS and MR. ALGEA BOLTON with attachments filed in support of plaintiffs' Motion for preliminary injunction,	
4-25-63	Order entered GRANTING oral motion of plaintiff to substitute Charles E. McNeil as President of Board of School Commissioners in placed of William B. Crane, who was named Chairman; and GRANTING oral motion of plaintiff to amend affidavit of Mrs. Ola Mae Davis within one week. Motion for preliminary injunction submitted on affidavits and taken under submission by the Court and Plaintiffs are allowed to and including May 24, 1963 to file its brief in support of motion and Defendants allowed to and including June 10, 1963 to rile reply brief, see Minute Entry No. 14,972 ,	
4-29-63	Copy of M/E No. 14,972 mailed to all attorneys of record,	
4-26-63	Affidavit of MR. ALGEA BOLTON filed,	
4-26-63	Points and Authorities in Support of Plaintiffs' motion for preliminary injunction filed by plaintiffs,	
5-9-63	Notice of Appeal filed by plaintiffs, Designation of Contents of Record of Appeal filed by plaintiffs, Copy of notice of appeal mailed to Mr. George F. Wood, and Mr. Joseph F. Johnson, attorneys for defendants,	
5-13-63	$250.00 cash/bond on appeal deposited in Registry of Court by appellants, Certificate of Clerk executed as to deposit of $250.00,	
5-17-63	Copy of appellants' mimeographed record on appeal received from appellants' counsel, and filed,	
5-27-63	Judgment of Fifth Circuit Court of Appeals received showing DENIAL of Appellants Petition on Appeal and DISMISSING the Appeal,	
6-10-63	DEFENDANT'S BRIEF filed with certificate of service attached AFFIDAVIT of CRANFORD H. BURNS ~~in support of Defendant's Brief~~ filed,	
6-24-63	Findings and Opinion on Motion for Preliminary Injunction filed, Order entered DENYING motion of plaintiffs for preliminary injunction and setting case for trial at 9:30 a. m. on November 14, 1963. (Minute Entry No. 15247). Copies mailed to attorneys of record,	
6-26-63	Notice of Appeal filed by plaintiffs,	
7-1-63	Copies of Notice of Appeal mailed to George F. Wood and Joseph F. Johnson, Attorneys for Plaintiffs,	
7-3-63	Supplemental Record on Appeal forwarded to CCA, Fifth Circuit.	
~~7-11-63~~	~~Order entered on oral motion of Defendants, GRANTING extension of time of thirty days or to and including the 12th day of August 1963. within which to file answer.~~	

DATE	PROCEEDINGS	Date Judgm

ATTORNEYS IN CIVIL ACTION 3003-63

ATTORNEYS FOR PLAINTIFFS:
Messrs. Jack Greenberg, Jonathan Shapiro, and Michael Davidson,
Suite 1790 - 10 Columbus Circle,
New York, N. Y. 10019

Mr. Vernon Z. Crawford and Mrs. Frankie Fields Smith,
1407 Davis Av.
Mobile, Ala. 36603

ATTORNEYS FOR PLAINTIFF-INTERVENOR, UNITED STATES OF AMERICA:

Mr. Jerris Leonard,
Assistant Attorney General,
Department of Justice,
Washington, D.C. 20530

Messrs. Frank M. Dunbaugh and Walter Gorman,
Attorneys,
The Department of Justice,
Washington, D.C. 20530

Mr. Charles S. White Spunner, Jr.
United States Attorney,
P. O. Drawer "E",
Mobile, Ala. 36601

ATTORNEYS FOR DEFENDANTS, BOARD OF SCHOOL COMMISSIONERS, ET AL:
Messrs. Abram L. Philips Jr. and James D. Brooks,
P. O. Box 2245,
Mobile, Ala. 36601

ATTORNEYS FOR DEFENDANTS-INTERVENORS, TWILA FRAZIER, ET AL:
Mr. Ralph Kennamer, P. O. Box 524, Mobile, Ala. 36601
Mr. Pierre Pelham, P. O. Box 291, Mobile, Ala. 36601

ATTORNEY FOR APPLICANTS FOR INTERVENTION, MOBILE COUNTY COUNCIL OF PARENT-TEACHER ASSOCIATIONS, ET AL:
Mr. Samuel L. Stockman,
P. O. Box 4483,
Mobile, Ala. 36604

ATTORNEY FOR APPLICANTS FOR INTERVENTION AS PLAINTIFF-INTERVENOR, NATIONAL EDUCATION ASSOCIATION, INC., and INTERVENOR, ALABAMA STATE TEACHERS ASSOCIATION, INC.:
Mr. Solomon S. Seay Jr.,
352 Dexter Av.
Montgomery, Ala. 36104

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Or Judgment
7-11-63	JUDGMENT and ORDER under Mandate of Fifth Circuit Court of Appeals dated July 9, 1963 entered by Judge Thomas restraining and enjoining the Defendant, Board of School Commissioners of Mobile County and its members from requiring and permitting segregation of the races in any school under their supervission, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed; and further ordered that the defendants are required to make an immediate start in desegregation of schools of Mobile County and that a plan be submitted not later than August 1, 1963, etc., See Minute Entry No. 15,289 ,	
7-11-63	Six copies of Judgment and Order delivered to U. S. Marshal for service on each member of Board of School Commissioners of Mobile County, and Cranford H. Burns, its Superintendent.	
7-11-63	Copies of M/E No. 15,289, mailed to all attorneys of record,	
7-11-63	Order entered on oral motion of Defendants, GRANTING extension of time of thirty days , or to and including the 12th day of August 1963, within which to file answer, Minuet Entry No. 15,293,	
7-15-63	Copies of order mailed to attorneys (5),	
7-15-63	Returnsof Marshal filed, showing service of Order on EACH defendant,	
7-19-63	Copy of OPINION-ORDER on Petition for Rehearing received and filed as Mandate from CCA, which amends judgment and order of July 9, 1963 so that the"plan shall be submitted to the District Court not later than August 18, 1963...to provide for carrying into effect not later than beginning of school year September 1963 and thereafter of the Alabama Pupil Placement Law as to all school grades without racial discrimination...".	
7-26-63	Order entered AMENDING judgment and order entered July 11, 1963 according to Opinion-Order of CCA filed 7-19-63. (Minute Entry No. 15391).	
7-31-63	Copies of order mailed to attorneys of record, (5 firms)	
8-7-63	Motion filed by defendants to defer desegregation of rural schools in Mobile County until September, 1964, noticed for hearing on August 12, 1963, at 9:30 A. M.	
8-12-63	ANSWER of defendants filed, with certificate attached,	
8-12-63	ORDER entered GRANTING defendants motion to defer desegregation of rural schools in Mobile County until September, 1964 and designating ALL schools outside the City Limits of the City of Mobile as rural schools for the purposes of this order, see Minute Entry No. 15,473 ,	
8-13-63	Copy of M/E No. 15,473 mailed to all attorneys,	
*8-12-63	Affidavit of Cranford H. Burns and Affidavit of C. L. Scarborough filed,	
8-15-63	Motion for Hearing immediately after the Defendant submit a plan for desegregation of schools of Mobile County, Alabama filed by Plaintiffs,	
8-19-63	Plan submitted by the Board of School Commissioners of Mobile County pursuant to Order Dated July 11,1963,as amended July 26,1963, filed,	

(Continued to next page)

DATE	PROCEEDINGS	Date Order Judgment N
8-21-63	Plaintiffs' objections to defendants' Plan of Desegregation filed,	
8-21-63	Transcript of proceedings had before Hon. Daniel H. Thomas at hearing on Aug. 21, 1963, filed,	
8-21-63	Order of Submission on Plaintiff's objections to Plan of Desegregation as filed on Aug. 19, 1963, see Min. Entry No. 15,492	
8-23-63	Order entered Approving Plan of Desegregation as filed on Aug. 19, 1963 with exceptions of two amendments as set out in this order, see Minute Entry No. 15,506 ,	
8-23-63	Copies of Min. Entry Nos. 15,492 and 15,506 mailed to attorneys,	
8-28-63	Notice of Appeal filed by plaintiffs, Copies mailed to Messrs. George F. Wood and Joseph F. Johnson, Attorneys for Defendants.	
9-3-63	Plaintiffs' Designation of Contents of Record on Appeal filed,	
9-9-63	Motion for Issuance of Order to Show Cause filed by plaintiffs, with Affidavit of Clarence E. Moses, Affidavit of Vernon Z. Crawford, Executive Order # 12 of Governor of Alabama, attached, Order to Show Cause issued by Judge Daniel H. Thomas, set for hearing at 3:00 p. m. on September 16, 1963, directed to Governor George C. Wallace, (Minute Entry No. 15,555). Motion for temporary restraining order filed by plaintiffs, Temporary Restraining Order issued, restraining Governor Wallace from interfering with desegregation of Murphy High School, etc. (Minute Entry No.15,555). Bond on issuance of temporary restraining order filed in sum of $1,000.00, 9 copies of motions, affidavits, and orders issued to Marshal for service on Governor Wallace, et al.	
9-13-63	Marshal's return of service of motions and order to show cause and restraining order on Governor Wallace by service on his executive secretary and on Governor Wallace personally, filed,	
9-16-63	Order entered CONTINUING and RE-SETTING hearing on motion for order to show cause to September 26, 1963 at 9:30 a.m. and continuing temporary restraining order entered 9-9-63; (Minute Entry No. 15,590).	
9-18-63	Copies mailed to attorneys of record,	
9-20-63	Order entered, on oral motion of Mr. D. R. Coley, extending time within which George C. Wallace may file responsive pleadings to Order to Show Cause etc. to and including September 26, 1963. (Minute Entry No. 15621).	
9-23-63	Copies mailed to attorneys of record,	
9-26-63	Responsive pleading on Hon. George C. Wallace, Governor of Alabama filed this date,	
9-26-63	Return of U. S. Marshal filed, showing service of Motion for Restraining order, Restraining Order, Motion for Order to Show Cause, and Order to Show Cause on Charles E. McNeil, Jack C. Gallalee, Arthur Smith, William B. Crane, Kenneth Reed, Dr. Cranford Burns, and Joe Smelley, member of Alabama Highway Patrol.	
9-26-63	Order entered CONTINUING hearing on motion for order to show cause pending further orders of the court, (Minute Entry No. 15,674)	

DATE	PROCEEDINGS
9-27-63	Copies of order of continuance mailed to attorneys,
9-27-63	Certified Supplemental Record on Appeal mailed to U.S.Court of Appeals, Fifth Circuit,
11-8-63	Motion for leave to amend Answer filed by defendants and Order entered granting same, Min. Entry No. 15,870 ,
11-8-63	AMENDMENT TO ANSWER filed by defendants, Copy of M/E No. 15,870 and Amendment to Answer mailed to Attys. for Plaintiff,
11-12-63	Motion for Discovery filed by Defendants and set down for hearing on Nov. 14, 1963 at 9:30 A.M., by Judge Daniel H. Thomas, Copy of Motion for Discovery and notice of setting mailed to attorneys of record,
11-13-63	Motion for order of this Court authorizing and permitting the introduction into evidence in trial of this case certain testimony taken in the trial of Ralph Stell, et al., vs. The Savannah-Chatom County Board of Education, et al. in the Sou. Dist. of Georgia, filed with Affidavit of GEORGE F. WOOD attached,
11-14-63	Plaintiffs' Plan of Desegregation filed with certificate attached,
11-14-63	Motion to Strike Defendants' Amendment to Paragraphs 9, 10 and 11 of Answer filed by Plaintiffs' with Memorandum Brief in support thereof attached, certificate of service attached,
11-14-63	Trial of Merits begun, Motion to Dismiss complaint filed by Defendants' on 4-23-63 taken under submission and the trial of this case not being completed said trial is recessed until November 15, 1963 at 9:30 a.m., Min. Entry No. 15,890-A ,
11-15-63	Trial resumed, witnesses further examined, and Plaintiffs' motion strike Defendants' Amendment to Para. 9, 10 and 11 filed on 11-14-63 is Denied; and this case is TAKEN UNDER SUBMISSION by the Court, Min. Entry No. 15,897 ,
11-29-63	Transcript of proceedings had before Judge Thomas, U. S. District Judge at Mobile, Alabama, on November 14 and 15, 1963.
11-13-63	Order entered GRANTING motion for order of Court authorizing and permitting the introduction into evidence in trial of this case certain testimony taken in the trial of Ralph Stell,et al., vs. The Savannah-Chatom County Board of Education, et al. in the Sou. Dist. of Georgia, filed with affidavit of George F.Wood,atta See Minute Entry No. 15,886-A ,
6-19-64	JUDGMENT and ORDER under Mandate of Fifth Circuit Court of Appeals dated June 18, 1964 received and filed showing following ruling to-wit; "It is now ordered and adjudged by this Court that this cause be, remaned to the said District Court with instructions to require the Board of School Commissioners of Mobile County, Alabama to present to the District Court forthwith its consideration a plan of desegregation which will meet the minimum standards set forth and outlined in the Birmingham case, being cause No. 20595 on the docket of this Court. The order of the Distric Court heretofore entered on June 24, 1963, denying injunctive relief, is vacated; the orders of the said District Court entere on July 11 and 26, 1963, pursuant to the mandate of this Court (continued to next page)

DATE	PROCEEDINGS	Date Orde Judgment I
6-19-64	in this case, are continued until modified by the District Court, all in accordance with the opinion of this Court;" "It is further ordered and adjudged that the appellees, Board of School Commissioners of Mobile County, and others be condemned, in solido, to pay the costs of this cause in this Court, for which let execution issued out of the ssid Distrixt Court."	
6-29-64	Order entered by Thomas, Judge, requiring submission of plan for desegregation in accordance with opinion and mandate of CCA rendered and issued June 18, 1964, requiring Board of School Commissioners to submit on or before July 17, 1964 a plan for desegregation in accordance with the opinion and mandate of CCA, hearing on any objections filed to said plan to be heard on July 29, 1964. (Minute Entry No. 16,900).	7 9.
6-30-64	Copies of order mailed to all attorneys of record,	
7-8-64	Defendants' motion to extend time for the Defendants to submit a Plan for Desegregation, from July 17th, 1964, in order for the U.S.Court of Appeals to rule on the Defendants' Petition for a Re-Haaring, etc., filed,	
7-11-64	Order entered AMENDING court's order of June 29, 1964 to extend the time for filing of a desegregation plan from "on or before July 17, 1964" to "on or before the 21st day of July 1964". (Minute Entry No. 16,941)	
7-13-64	Copies mailed to attorneys of record,	
7-14-64 (x)	Plaintiffs' Response to Defendants' Motion for an extension of time in which to present a plan of desegregation filed,	
7-31-64	Order Approving Plan as Modified, Min. Entry No. 17,016. Copy of M.E. 17016 mailed to Messrs. George F. Wood and Vernon Z. Crawford on July 31, 1964.	
(x) 7-21-64	Amendment to Plan Submitted by the Board of School Commissioners of Mobile County, Pursuant to Order Dated June 29, 1964, with Certificate of Serfvice	
7-27-64	Plaintiffs' Objections to Desegregation Plan submitted by the Defendant Board of School Commissioners of Mobile Cou nty and Motion for a Revised Plan, with Certificate of Service.	
12-21-64	Motion filed by plaintiffs for Further Relief,	
12-23-64	Interrogatories propounded to defendants filed by plaintiffs,	
12-30-64	Motion for Additional Time to Answer Interrogatories filed by defendants, noticed for hearing at 9:30 A.M. January 5, 1965.	
1-6-65	Plaintiffs' response to Defendants' motion for additional time to answer Interrogatories,SHOWING NO OBJECTION to the granting of motion and extension filed,	
1-6-65	Order entered GRANTING defendants' motion for extension of time to JANUARY 25, 1965 within which to answer plaintiffs' interrogatories. (Minute Entry 17,752).	
1-14-65	Copies mailed to attorneys,	
1-20-65	Notice to withdraw his name as counsel for defendants filed by Mr. Joseph F. Johnston, Attorney.	
1-26-65	ANSWERS TO INTERROGATORIES filed by defendants.	
2-23-64	Defendants answer to motion for further relief filed,	

(SEE NEXT PAGE)

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D Jud
2-26-65	Hearing on Plaintiff's motion for further relief,witnesses examined, exhibits offered in evidence and order entered continuing hearing to Friday Morning,March 5,1965,at 9:30 A.M.,(MINUTE ENTRY NO.17975),	
3--5-65	Copy of M.E.NO.17975 mailed to all Attorneys,	
3-5-65	Hearing on Plaintiffs' motion for further relief resumed,witnesses further examined, exhibits offered in evidence and case taken under SUBMISSION, (MINUTE ENTRY NO.17994),	
3-10-65	Copy of M.E.NO.17994 mailed to all Attorneys,	
3-15-65	BRIEF of defendants, opposing motion, filed, and delivered to Judge,	
3-15-65		
3-23-65	MAP of City of Mobile showing the re-drawn attendance areas for elementary schools filed by defendants,	
3-30-65	Transcript of proceedings had before Judge Daniel H. Thomas at Mobile, Alabama on February 26 and March 5, 1965 filed by Court Reporter,	
3-31-65	Findings of Fact and Conclusions of Law filed by Thomas, Judge,	
	DECREE entered by court, on plaintiffs' motion for further relief and on defendants' answer thereto, etc. striking provision in Plan that requires return of completed form in person, and striking criteria for transfer in the Plan designated (i), (l), (m) and (n), directing Board to give reasonable notice to school patrons of terms and time limitations of the Plan, and approving desegregation plan of the Board in all other respects, as constitutional and non-discriminatory, and except as ordered, motion of plaintiffs denied. (Minute Entry No. 18,144).	
4--2-65	Copies of Findings, Conclusions and Order mailed to attorneys of record. mpcox.	
4-14-65	NOTICE OF APPEAL filed by Birdie Mae Davis, et al,	
4-14-65	Copy of Notice of Appeal mailed to George F. Wood and D.R.Coley,Jr.,	
4-23-65	Appellant's Designation of Contents of Record on Appeal filed,	
5-24-65	Order entered extending time for filing and docketing Transcript of Record in the U.S.Court of Appeals,New Orleans, Louisiana,to, and including the 13th day of July,1965,(MINUTE ENTRY NO.18445),	
5-26-65	Certified copy of Notice of Appeal and Order Extending Time,etc., mailed to Clerk,U.S.Court of Appeals,Fifth Circuit,New Orleans, Louisiana,	
5-26-65	Copy of Minute Entry No.18445 mailed to Derrick A.Bell,jr.,Vernon Z.Crawford,Clarence E.Moses,George F.Wood and D.R.Coley,Jr.,	
5-26-65	Motion filed by plaintiffs for refund of $1,000.00 cash bond,	
6--1-65	Copy of motion of 5-26-65 mailed to defendants' attorneys,	
6-28-65	Motion for refund of $1,000.00 submitted without argument,	
7-7-65	Certified copy of Original Transcript of Record on Appeal mailed to Clerk,U.S.Court of Appeals,New Orleans,La.,and 2 packages of exhibits mailed via Parcel Post,Under separate cover,	
7-7-65	Copy of letter of transmittal mailed to Derrick A.Bell,Jr.,Vernon Z.Crawford,Clarence E.Moses and George F.Wood,	
8-12-65	Order entered GRANTING Plaintiffs' motion for refund of $1,000.00 cash bond and directing Clerk to draw and sign a check on the Registry Account in the sum of $1,000.00, payable to Vernon Z.	

DATE	PROCEEDINGS	Date Orde Judgment ?
8-12-65	Crawford, As Attorney for Plaintiffs, (MINUTE ENTRY NO.19902),	
8-16-65	Copy of M.E.NO.19902 mailed to Attorneys, (5),	
10-6-65	Defendants-~~Appellees~~' Additional Designation of Record on Appeal filed, and request for permission to send exhibit to U.S.Court of ~~Appeals~~	
10-6-65	Order entered granting ~~Appellees~~' request that a map of the City of Mobile,showing the re-drawn attendance areas be certified up to the U.S.Court of Appeals, Fifth Circuit, New Orleans, Louisiana, (MINUTE ENTRY NO. 19143),	
10-8-65	Copy of M.E.NO.19143 mailed to George F. Wood,Jack Greenberg, Vernon Z. Crawford, Clarence E. Moses and Derrick A.Bell,jr.,	
10-11-65	Certified copy of Appellees' Additional Designation of Record on Appeal,order entered granting the permission to file additional designation of record and ORIGINAL PLEADING, together with MAP, MARKED EXHIBIT "A" all sent to Clerk, U.S.Court of Appeals,Fifth Circuit,New Orleans, Louisiana, and letter of transmittal,(copy) mailed to Attorneys, (4),i.e.,G.F.Wood, Jack Greenberg,Vernon Z.Crawford,Clarence E.Moses and D.R. Coley,Jr.,	
8--17-66	Judgment of CCA received, reversing and remanding district court. Opinion of CCA received,	
8-17-66	Order entered by Thomas, Judge, pursuant to opinion and mandate of CCA directing appellees (respondents) to file modifications of its Plan for desegration in order to conform with order of appellate court, (Minute Entry No. 20703)	
8-17-66	Service of copy of order accepted by George F. Wood, Attorney for defendants,	
8-17-66	Copy mailed to attorneys Derrick A. Bell, Jr., Vernon Z. Crawford, Clarence E. Moses, and D. R. Coley, Jr.	
8-19-66	Motion for an extension of time of 60 days within which to file an overall plan to incorporate the addition requirements by the Court of Appeals, filed by the defendant,	
8-19-66	Order by the Court granting motion for additional time in which to file an overall desegregation plan is GRANTED and defendants have and until and including Oct. 19, 1966, in which to file such plan; Modifications filed Aug. 19, 1966, in response to an order entered Aug. 17, 1966, directing that such modifications be submitted are hereby APPROVED, Min. Entry No. 20,719. Copy of M.E. 20719 mailed on Aug. 19, 1966, to Messrs. Derrick A. Bell Jr., Vernon Crawford, Clarence E. Moses, George F. Wood, and D.R. Coley Jr.	
8-26-66	Motion filed Aug. 26, 1966, by the Plaintiffs for Further Relief, with Certificate of Service	
8-30-66	Motion filed Aug. 26, 1966, by the Plaintiffs for Further Relief is DENIED, Minute Entry No. 20,775 . Copy mailed on Aug. 30, 1966, to Messrs. Vernon Z. Crawford and George F. Wood.	
8-30-66	8-30-66- Notice of Appeal filed to order denying further rel	
9-2-66	Motion to Dismiss the appeal filed on Aug. 30, 1966 filed, by plaintiff	
9-2-66	Order entered GRANTING the mobion to dismiss the appeal(M/E No. 20804)	
9-7-66	Copy of M/E mailed to Derrick A. Bell, Jr., Clarence E. Moses, George F. Wood, D. R. Coley, Jrr, and Vernon Z. Crawford, attorneys,	

(SEE NEXT PAGe) (SEE NEXT PAGE)

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS
10-19-66	School Attendance Plan filed Oct. 19, 1966, by Defendants to have effect in the schools of Mobile County for School Year 1967-68, with Certificate of Service.
4--18-67	Motion for Further Relief filed by plaintiffs, requesting a 30 day registration period commencing May 1, 1967 for the 1967-68 school year, and to enter the decree proposed by the U.S.Court of Appeal in its decision in the Jefferson County case, as the desegregatio plan in the present case,
4-25-67	Motion to Strike filed by defendants with answer to the Motion for Further Relief filed by plaintiffs on 4-18-67,
5-8-67	Plaintiff's interrogatories to defendants, filed
5-15-67	Objections to Interrogatories filed by defendants,
5-22-67	Notice of taking oral deposition of Sam H. Stout, Joseph W. LuQuire, Joseph A. McPherson and Cranford H. Burns filed by plaintiffs,
5-22-67	Motion that Depositions not be taken, filed by the defendants,
5-23-67	Answers Filed by the Defendants to the Interrogatories propounded by the Plaintiff, with Certificate of Service.
5-26-67	Motion for continuance of hearing on plaintiffs' Motion for Further Relief and defendants' Motion to Strike filed by attorneys for defendants, Motion for continuance of depositions scheduled on May 31, 1967 filed by defendants' attorneys,
5-29-67	ORDER entered, Motion for continuance of hearing and motion for continuance of depositions filed by the defendant on May 26, 1967 is GRANTED. See M/E no. 22,175
5-29-67	Motion to Modify subpoenas duces tecum filed by defendants,
6-7-67	Copy of M/E 22, 175 mailed to each attorney,
6-7-67	Notice of taking of depositions of DR. CRANFORD H. BURNS, JAMES A. McPHERSON, JOSEPH LUQUIRE, and SAM H. SHOUT on June 15, 1967 at 9:30 A. M. filed by plaintiffs.
6-14-67	Motion to intervene as plaintiff filed by United States of America, Supporting Memorandum filed by U.S., Motion for Supplemental Relief filed by U.S.,
6-14-67	Order entered, after argument in open court, GRANTING motion to modify subpoenas duces tecum, and limiting production of documents to 1966-67 except attendance areas and feeder patterns prior to year 1966-67, and limiting evidence as to school construction, school closings and school consolidations, to the year 1964-65 and succeeding years. (Minute Entry 22244).
6-14-67	Order entered GRANTING motion of United States to intervene as plaintiff, and notices mailed. Copy of Minute Entry 22244 mailed to attorneys of record.
6-14-67	Certificate of service as to Motion for leave to intervene, etc. filed by intervenor-plaintiff,
6-20-67	Motion to limit the testimony of the witness Sam Shout filed by defendants. Oral order issued granting motion to limit testimony.
6-20-67	Notice of motion and Motion for Production of Records under Rule 34, F.R.C.P. filed by plaintiff-intervenor, United States of America,
6-22-67	Motion to Limit the Testimony of the witness Cranford H. Burns filed by the defendants,

DATE	PROCEEDINGS	Date Ord Judgment
6-22-67	Motion to have Intervenor's motion for production of documents set upon the regular motion docket for hearing filed by defendants,	
6-22-67	Motion in Opposition to Defendants' Motion to set Intervenor's motion for production of documents upon the regular motion docket for hearing filed by United States of America, Intervenor,	
7--18-67	Amended Motion for further relief or, on the alternative,	
	Motion in opposition to Defendants' "School Attendance Plan", filed in open court by plaintiffs,	
	Motion to quash or modify subpoena duces tecum served upon Cranford Burns et al. filed by defendants	
	Motion to strike the Motion for Supplemental Relief filed by Plaintiff-Intervenor on June 14, 1967, filed in open court,	
	Motion to suppress deposition of CRANFORD H. BURNS filed by defendants,	
	Motion to suppress deposition of JAMES A. McPHERSON filed by the defendants,	
	HEARING begun on Plaintiffs' Motion for Further Relief, witnesses examined and exhibits offered, and hearing continued until July 19, 1967 at 9:30 A. M. (Minute Entry No. 22,389-B).	
7--19-67	Motion to compel answers to Plaintiffs' Interrogatories filed by plaintiffs, in open court,	
	HEARING on motion for further relief resumed, witnesses further examined and exhibits offered in evidence, and hearing recessed until July 20, 1967 at 9:30 A. M. (Minute Entry No. 22,391-A)	
7-20-67	HEARING on motion for further relief resumed, witnesses further examined and exhibits offered in evidence, and hearing recessed until July 24, 1967 at 9:30 A.M. (Minute Entry No. 22,396-A)	
7-24-67	HEARING on motion for further relief resumed, witnesses further examined and exhibits offered in evidence, and hearing recessed until July 25, 1967 at 9:30 A.M. (Minute Entry No. 22,402-A)	
7-25-67	HEARING on motion for further relief resumed, witnesses further examined and exhibits offered in evidence, and hearing recessed until July 26, 1967 at 9:30 A.M. (Minute Entry No. 22,403-C)	
7-26-67	HEARING on motion for further relief resumed, witnesses further examined and exhibits offered in evidence, and hearing recessed until July 27, 1967 at 9:30 A.M. (Minute Entry No. 22,405-A)	
7-27-67	HEARING on motion for further relief resumed, witnesses further examined and exhibits offered in evidence, and hearing recessed until July 28, 1967 at 9:30 A.M. (Minute Entry No. 22,408-A)	
7-27-67	Motion to suppress deposition of SAM SHOUT filed by defendant	
	Motion to suppress deposition of JOHN R. MONTGOMERY filed by defendant,	
7-28-67	Response to plaintiff's motion to cmmpel answers to interrogatories filed by defendant,	
7-28-67	HEARING on motion for further relief resumed, all parties rests case taken under submission, plaintiffs and plaintiff-intervenor given until Aug. 7, 1967 to file their briefs, defendant given until Aug. 15, to file its brief, see Minute Entry No. 22,417-A,	
8--4-67	Copy of M/E 22,417 mailed to attorneys,	
8--7-67	Plaintiffs' Brief, Memorandum of Law, Plaintiffs' Proposed Decree, and Certificate of Service filed,	
8--7-67	Plaintiff-Intervenor's Trial Brief filed, with Proposed Decree and Appendices to Plaintiff-Intervenor's Trial Brief,	
8--8-67	(All above-listed briefs, etc. placed in Judge Thomas' box)	

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D Ju
8-14-67	Copy of Proposed Findings of Fact and Conclusions of Law filed by Plaintiff-Intervenor,	
8-18-67	Amendments to Plaintiffs' Proposed Decree, filed on August 18, 1967, by the Plaintiffs, with Certificate of Service Arguments of counsel heard by court,	
8-24-67	Interim Order issued by Court relative to changes in attendance area boundary lines, setting special transfer period for August 28-31, during which time applications for transfers may be made to afford students whose places of residence have been changed from one elementary attendance area to another to transfer to the school serving the attendance area in which their residence now lies, etc. (Minute Entry No. 22,522). Notice to be published in paper, attached to order, approved by Judge Thomas.	
8-25-67	Copies of order with notice attached mailed to all attorneys of record.	
8-28-67	Notice of Appeal from order entered on August 24, 1967 filed by plaintiffs,	
10-5-67	Partial Transcript of Trial filed,	
9--1-67	Notice of Appeal from order entered on August 24, 1967 filed by plaintiff-intervenor, the United States of America,	
10-4-67	Following documents filed by defendants: 1. Affidavit of Judson R. Martin, Jr. 2. Affidavit of Sam H. Shout 3. Affidavit of Angie Russell Holmes with copy of display ad 4. Affidavit of E. E. Koch attesting to publication of display advertising 5. Affidavit of E. E. Koch with attached map of Mobile County 6. Affidavit of E. E. Koch with map of elementary attendance areas.	
10-5-67	Transcript of Record mailed to U. S. Court of Appeals, New Orleans,	
10-13-67	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE entered on plaintiffs' motion for further relief, as amended, and plaintiff-intervenor's motion for Supplemental Relief, directing defendants to provide option plan, publish notices, to file annual reports to the court, etc., and APPROVING defendant's desegregation plan filed on October 19, 1966, with certain requirements for the operation of the plan, and in all other respects, except the relief included in interim order of 8-24-67, DENYING plaintiff's motion for further relief and plaintiff-intervenor's motinn for supplemental relief. (Minute Entry No. 22,815)	
10-13-67	Copy of Findings, Conclusions and Order delivered to U. S. Marshal for service on defendant,	
10-13-67	Copies of Findings, Conclusions and Order deliveredto Abe L. Philips, and Vernol R. Jansen, Jr.; copies mailed to Attorneys Charles Jones, Vernon Crawford, Walter Gorman. mpcox	
10-16-67	Return on Service of Writ filed by U.S.Marshal, showing service of Order etc. on Board of School Commissioners of Mobile County, Ala. by service on Mr. J. A. McPherson, Associate Superintendent,	
10-17-67	Notice of Appeal from Findings of Fact, Conclusions of Law and Decree entered on October 13, 1967, filed by Plaintiff-Intervenor, U. S.	
10-17-67	Transcript of record on appeal received from CCA for use of attorneys in preparing supplemental briefs,	
10-18-67	Copy of order entered by CCA received, continuing appeals, to be reset for hearing at earliest possible date after November 15, 196	

DATE	PROCEEDINGS	Date Ord Judgment
	and providing for filing of supplemental briefs, etc.	
10-26-67	Notice of Appeal filed by the Plaintiffs, from the Decree 10-13-67,	
11-14-67	Partial transcript of trial filed, sent to Court of Appeals 11-15-67	
12-12-67	Balance of transcript sent to Court of Appeals,	
2--20-68	Application for approval of proposed expansion of school building facilities at Toulminville High School, filed by defendant on February 20, 1968.	
3--4-68	Opposition to Defendants' Application for Approval for Proposed Expansion, filed by Plaintiffs.	
3--4-68	Response of Plaintiff-Intervenor U. S. to Defendants' Application for approval of expension plans, filed,	
4-22=68	Application for approval of proposed construction on the Howard Elementary School site, filed by defendant on April 22, 1968,	
5--7-68	Certified copy of judgment,court of appeals, rendered May 6, 1968, received and filed, REVERSING district court and REMANDING case for entry of decree attached to opinion of appeal court, and taxing costs of cause against appellees, Board of School Commissioners, et al. (CCA costs) (Appeal Court No. 25,162)	
5--7-68	Certified copy of judgment, Court of Appeals, issued May 6, 1968, received and filed, DENYING appellee's motion for rehearing, but modifying Decree issued for entry by the District Court in certain respects. (Appeal Court No. 25,175)	
	Hearing begun in open court on pending motions, witnesses examined, exhibits offered in evidence, and following motions taken under SUBMISSION: (1) Application for approval of proposed expansion of school building facilities at Toulminville High School,filed 2-20-68; (2) Opposition to Defendants' Application, filed 3-4-68; (3) Response of Plaintiff-Intervenor to Defendants' Application, filed 3-4-68; (4) Application for approval of proposed construction on the Howard Elementary School site, filed on 4-22-68. (M/E 23781-C)	
5-15-68	Copies of M/E 23,781-C mailed to all attorneys of record,	
5-13-68	DECREE entered by Thomas, Judge, pursuant to opinion and judgment of CCA, Fifth Circuit, (Minute Entry No.23782-C)	
5-17-68	Copies of decree mailed to all attorneys of record.	
5-17-68	OBJECTIONS to survey information submitted by defendants and Motion to continue the hearing presently scheduled for May 27, 1968 filed by plaintiff-intervenor, United States of America.	
5-21-68	Plaintiffs objections to survey information submitted by defendant and motion to continue hearing Scheduled May 27, 1968, filed,	
5-22-68	Deposition of Dr. Frederick P. Venditti filed by plaintiff-intervenor,	
5-22-68	Motion filed May 22, 1968, by the Defendants for a Continuance, with Certificate of Service	
5-22-68	Motion to continue hearing filed by plaintiff-intervenor 5-17-68 GRANTED; Motion to continue hearing filed by plaintiffs on 5-21-68 GRANTED; Motion to continue hearing filed by defendants on 5-22-68 GRANTED.	

DATE	PROCEEDINGS
5--7-68	Following maps filed in open court by defendant: Map No. 1, Elementary Areas Map No. 2, Junior High Areas Map No. 3, Senior High Areas Map No. 4, Pupil Population, Senior High Grades, (10-12), Map No. 5, Pupil Population, Junior High Grades, (7-9), Map No. 6, Pupil Population, Elementary Grades, (1-6), Map No. 7, Pupil Population, Senior High Grades, (10-12), Map No. 8, Pupil Population, Elementary Grades (1-6), Map No. 9, Pupil Population, Junior High Grades, (7-9),
5-29-68	Application to intervene as party defendants filed by Twila Frazier,
6--1-68	Information pursuant to Decree entered by Court on May 13, 1968 filed by defendants,
6-10-68	Motion for Further Relief filed by the Plaintiffs
6-12-68	Motion filed June 12, 1968 by the Defendants to reject the proposed revisions of attendance area boundaries and feeder patterns and to approve the desegregation plan attached to the Motion, with Certificate of Service
6-17-68	Memorandum in opposition to Motion to Intervene filed by Plaintiffs,
6-21-68	Order entered GRANTING petition for intervention, filed on May 29, 1968 and continuing hearing set for June 26, 1968 until a later date; Minute Entry No. 23,968,
6-26-68	Copies mailed to attorneys,
7-1-68	Opposition to defendants' motion to reject their proposed zone lines filed by plaintiffs, Reporter's transcript of conference of attorneys filed,
7-1-68	Interrogatories propounded to defendant filed by plaintiff-intervenor United States of America,
7-15-68	Motion for extension of time to answer Interrogatories No. 34, 35, 36, 37 & 38, filed by defendants, Notice of substituting maps of school attendance zones filed by defendants, Summary of Enrollment and Utilization of Facilities by Schools filed by defendants,
7-16-68	Answer to interrogatories propounded by Plaintiff-Intervenor filed by defendant, Board of School Commissioners,
7-17-68	Motion to dismiss complaint of Defendants-Intervenors, or, in the alternative, to Strike Allegations from the complaint, Trial on merits begun; witnesses examined, exhibits offered and trial RECESSED until July 18, 1968 at 9:30 A. M. (M/E # 24,059-A)
7-18-68	Trial resumed; witnesses examined, exhibits offered in evidence, and trial RECESSED until July 19, 1968 at 9:30 A. M. (M/E # 24,060-A)
7-19-68	Trial resumed; witnesses examined, exhibits offered, etc. and trial RECESSED until July 22, 1968 at 9:30 A. M. (M. E. No. 24062-B)
7-22-68	Trial resumed; witnesses examined, exhibits offered in evidence, and trial RECESSED until July 23, 1968 at 9:30 A. M. at 9:30 A. M. (Minute Entry No. 24,065-A)
7-23-68	Trial resumed; Motion filed in open court by defendant Board of School Commissioners to quash subpoena duces tecum issued to Dr. Cranford Burns at request of U. S.,

DATE	PROCEEDINGS	Date Or Judgmen
	Witnesses examined and exhibits offered in evidence for plaintiff;	
7-23-68	The trial not being completed at 4:30 P. M., trial RECESSED until July 24, 1968 at 9:30 A. M. (Minute Entry No. 24,073)	
7-24-68	Notice of taking deposition of Dr. Ernest Stone filed in open court by defendant Board of School Commissioners,	
	Trial resumed; witnesses further examined and exhibits offered in evidence on behalf of plaintiff-intervenor and plaintiff-intervenor rests. Defendant-Intervenors' witnesses and exhibits offered in evidence and defendant-intervenors rest All parties rest. At 4:10 P. M. case ordered taken under SUBMISSION by the Court. (Minute Entry 24,075).	
7-25-68	Order for disposition of exhibits offered at hearing held on July 18, 19, 20, 24, 25, 26, 27 and 28, 1967, directing their return to respective attorneys of record. (Minute Entry No. 24,077).	
	Copy of this order mailed to attorneys Jones, Dunbaugh, Jansen and Phillips on 7-30-68. wet.	
7-29-68	OPINION and DECREE entered by Thomas, Judge, permanently enjoining defendants from discriminating on the basis of race or color in the operation of the school system, and to take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system as to desegregation, exercise of choice, transfers, prospective students, and providing for a report to the court on or before December 16, 1968, etc. (Minute Entry No. 24,086).	
	Copies mailed and furnished to all attorneys of record.	
7-31-68	Motion for Modification of Decree filed by U. S. plaintiff-Intervenor, with proposed order of modification attached,	
7-31-68	Certificate of service of motion for modification filed by U.S.	
8--1-68	Motion for Interim Order filed by defendants, Board of School Commissioners, praying that the School Board be allowed to operate insofar as the method of student assignment is concerned, on the same basis as it operated last year, or in the alternative, for an order permitting the defendant to prepare for and to operate the school system on the basis of the desegregation plans submitted to the court with its motion of June 12, 1968.	
8-1-68	Motion DENIED by Daniel H. Thomas, Judge, (notices mailed 8-7-68)	
8--2-68	ORDER ENTERED in response to motion of plaintiff-intervenor United States for modification, MODIFYING and AMENDING decree of 7-29-68 in certain respects. (Minute Entry No. 24,101)	
8--2-68	Copy of M/E 24,101 mailed to attorneys Jones, Crawford, Philips, Dunbaugh, Jansen and Pelham.	
8--9-68	Petition for modification of Decree of July 29, 1968, under Section II, pertaining to attendance zones, filed by defendants.	
8-13-68	Motion to set aside order of July 25, 1968 disposing of exhibits, filed by U. S.,	
8-16-68	Faculty Progress Report, filed by the defendants,	
8-15-68	Order entered modifying Court's decree of July 29, 1968, Minute Entry No.24,181,	
8-19-68	Copies mailed to Jones, Crawford, Philips, Dunbaugh, Jansen, Pelham and Kennamer,	
8-22-68	Motion in support of Plaintiff-Intervenor's motion to set aside the order of July 25, 1968, disposing of exhibits filed, by plaintiff,	

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DATE	PROCEEDINGS	D Jud
9--6-68	Motion to set aside order of July 25, 1968 disposing of exhibits filed on 8-13-68 by U.S., and Motion in support of Plaintiff-Intervenor motion to set aside order filed on 8-22-68 by plaintiff GRANTED as to each motion, notice to attorneys of record.	
9-12-68	Petition for Modification of Court's Decree filed by the defendants	
9-13-68	Order entered correcting and modifying initial paragraph of Sec.III of Court's decree of July 29, 1968, Min. Entry No.24,282,	
9-16-68	Copies of Min. Entry No. 24,282 mailed to attorneys Jones, Crawford, Philips, Dunbaugh, Jansen, Pelham and Kennamer,	
9-17-68	Faculty Progress Report filed on Sep. 17, 1968, by the Defendant, Board of School Commissioners of Mobile County, with Certificate of Service.	
9-27-68	Notice of Appeal filed by the Plaintiffs, with Certificate of Service	
9-30-68	Copy of Notice of Appeal mailed to Messrs. Abram L. Philips; Pierre Pelham; Ralph Kennamer; Messrs. Frank Dunbaugh & Walter Gorman; and Vernol R. Jansen, Jr.	
10-1-68	Notice of Appeal filed by the United States, Plaintiff-Intervenor, Without Certificate of Service	
10-9-68	Copy of Notice of Appeal filed by the United States on October 1, 1968, mailed to Miss Frankie L. Fields; Mr. Vernon Z. Crawford; Messrs. Charles H. Jones Jr., Michael Davidson, and Jack Greenberg; Mr. Abram L. Philips; Mr. Pierre Pelham; Mr. Ralph Kennamer; and Mr. Walter Gorman.	
10-10-68	Notice of Appeal filed by the Defendants, Board of School Commissioners of Mobile County, Et Al, With Certificate of Service	
10-11-68 (*)	Notice of Appeal filed by the Defendant-Intervenors, Twila Frazier, et al, Without Certificate of Service	
10-15-68	Copy of Notice of Appeal filed by the Defendants, Board of School Commissioners of Mobile County, et al, and copy of Notice of Appeal filed by the Defendants-Intervenors, Twila Frazier, et al, mailed on 15 Oct. 1968 to Messrs. Stephen J. Pollak; Frank M. Dunbaugh; Vernol R. Jansen Jr.; Vernon Z. Crawfor d; Charles H. Jones Jr., Michael Davidson, and Jack Greenberg; Ralph Kennamer; and Walter Gorman; and Miss Frankie L. Fields.	
10-15-68	Copy of Notice of Appeal filed by the Defendants, Board of School Commissioners of Mobile County, et al, mailed on 15 Oct. 1968 to Pierre Pelham	
10-15-68	Copy of Notice of Appeal filed by the Defendant-Intervenors, Twila Frazier, et al, mailed to Abram L. Philips Jr. on 15 Oct. 1968	
10-18-68 (*)	Designation by defendant of Record on Appeal and Motion to limit plaintiff-intervenors designation, filed by defendant	
10-14-68	Designation by the Appellant, United States of America, of Record of Appeal and Request for Immediate Certification and Transmittal	
10-21-68	Desigaation by the Appellants, Birdie Mae Davis, et al, of Record on Appeal and Request for Immediate Certification and Transmittal	
10-25-68	Report to the Court filed by defendants,	
11--1-68	Report to the Courtfiled on Nov. 1, 1968, by the Defendant, with Certificate of Service	
11--7-68	Order by the Court that designation of record on appeal shall consist of proceedings which have transpired since most recent decree of Court of Appeals entered on 12 March 1968,Min.Entry No. 24,515	

(SEE OTHERSIDE)

DATE	PROCEEDINGS	Date Judgm
	~~and Exhibits~~	
11--8-68	Transcript of Record/mailed to the U.S. Court of Appeals, Fifth Circuit, ~~and Exhibits~~ on 8 Nov. 1968	
11-8-68	Copies of Minute Entry No. 24,515 mailed to attorneys of record,	
12-4-68	Reporter's transcript of Hearing on Motion on Oct. 28, 1968, filed	
12-6-68	Motion to Substitute parties, filed United States,	
	Application for an Order to Show Cause, filed by United States,	
12-4-68	Report to the Court filed on Dec. 4, 1968, by the Defendants in compliance with Para. VI (b)of Court's Order of Aug. 2, 1968, modifying its decree of July 29, 1968, with Certificate of Service.	
12-11-68	Motion to Strike and/or Dismiss Application for Order to Show Cause, filed by the defendant with Memorandum in support of Motion to Strike,	
12-19-68	Report to the Court filed by defendants, in response to para. V(a) and (b) of the Court's Order of Aug. 2, 1968,	
12-19-68	Court Reporter's Transcript of the Testimony of the Hearing held on July 17, 18, 19, 22, 23, 24, 1968	
12-20-68	Order of the US District Court for the Fifth Circuit DENYING the Appellees' Motion to Dismiss and ordering that the Motions of Appellants to require transmission of the supplemental record is GRANTED	
12-26-68	Supplemental Record of Appeal mailed to the U.S. Court of Appeals of the Court Reporter's Transcript of the Testimony offered on July 17, 18, 19, 22, 23, and 24, 1968 numbered from Pages 1692 to 2651, Incl., ~~and~~ and Hearing on Motion held on October 28, 1968, as reported by the Court Reporter and numbered from Pages 2652 to 2661, Incl.	
12-27-68	Record on Appeal as per order of the Fifth Circuit received in this office on Dec. 20, 1968, consisting of four volumes mailed to the U.S. Court of Appeals	
12-20-68	ORDER Substituting Parties, Sidney C. Phillips and Homer L. Sessions and replaced Jack C. Gallalee and Kenneth Reed as members of the Board of School Commissioners of Mobile Co., Ala. See M/E 24,742	
12-27-68	Copy of M/E 24,742 mailed to each Attorney,	
12-20-68	Order entered GRANTING defendant's application for new construction in the Howard Elementary School and DENYING the application for new construction at the Toulminville School, (M/E No. 24,750).	
12-27-68	Copies mailed to attorneys,	
1-2-69	Report to the Court on reports required by Courts order of Aug. 2, 1968 to be filed on Dec. 16, 1968, filed by Defendants,	
1--3-69	Report to the Court filed on Jan. 3, 1969, by the Defendants, with Certificate of Service	
1-9-69	Motion for Rehearing or Reconsideration, filed by defendants,	

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DATE	PROCEEDINGS
1-28-69	Notice of Appeal filed on Jan. 28, 1969, by the United States, Plaintiff-Intervenor, the appeal being from that part of Court's order approving construction at the Howard Elementary School.
1-28-69	Motion filed Jan. 28, 1969, by the United States, plaintiff-intervenor, for Suspension of Court's Order of Dec. 20,1968, Granting approval of the Construction Plans for the new Howard Elementary School Pending Appeal, with Certificate of Service
1-28-69	Order by the Court dated Jan. 28, 1969, on Motion filed by the United States for Suspension of Court's Order Granting Approval of the Construction Plans for the new Howard Elementary School, Min. Entry No. 25010. Copy of M.E. 25010 mailed on Feb. 20, 1969, to Messrs. Jack Greenberg, Charles H. Jones, Jr., Vernon Z. Crawford, Abram L. Philips Jr., Frank M. Dunbaugh, Walter Gorman, Vernol R. Jansen, Jr., Ralph Kennamer, and Pierre Pelham.
1-29-69	Notice filed Jan. 29, 1969, of Deposition on oral examination of Harry Atkinson, filed by the United States, Plaintiff-Intervenor, with Certificate of Service.
1-31-69	Motion filed Jan. 31, 1969, by the Defendants for Order for Protection of Party, with Certificate of Service.
1-31-69	Order of the Court GRANTING the Motion filed Jan. 31, 1969, by the Defendants for Order for Protection of Party and postponing the taking of the Deposition to a later date.
2--4-69	Notice filed Feb. 4, 1969, of Deposition on oral examination of Dr. Cranford Burns, James A. McPherson, Bobby Ray Clardy, Harry Atkinson Hammer, and Jesse Jordan, with Certificate of Service, Filed by the United States, Plaintiff-Intervenor
2--4-69	Motion filed Feb. 4, 1969, by the Defendant for Order for Protection of Party, with Certificate of Service
2--4-69	Motion filed Feb. 4, 1969, by the Defendant for Order for Protection of Party, with Certificate of Service
2--4-69	Designation of Record on Appeal and Request for Immediate Certification and Transmittal, filed on Feb. 4, 1969, by the United States, Plaintiff-Intervenor.
2-11-69	Motion filed Feb. 11, 1969, by the United States of America, Plaintiff-Intervenor, for Production of Records Under Rule 34, F.R.C.P.,with Certificate of Service
2-11-69	Order of the Court entered on Feb. 11, 1969, on Motion for Production of Documents Under Rule 34, GRANTING the motion, Minute Entry No. 25078. Copy of M.E. 25078 mailed on Feb. 20, 1969, to Messrs. Jack Greenberg, Charles H.Jones Jr., Vernon Z. Crawford, Abram L. Philips Jr., Frank M. Dunbaugh, Walter Gorman, Vernol R. Jansen Jr., Ralph Kennamer, and Pierre Pelham
2-17-69	Notice of Appeal filed Feb. 17, 1969, by the Plaintiffs, with Certificate of Service
2-20-69	Deposition of Harry Walter Atkinson filed on Feb. 20, 1969. (ON TOP OF
3--7-69	Motion to quash or limit subpoena duces tecum served on William B. Crane filed by defendants,
3--7-69	Information for the Court filed by defendants, (this document placed in red folder)

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DATE	PROCEEDINGS	Date C Judgme
2-24-69	Transcript of Testimony taken on May 7, 1968, filed by the Court Reporter on 24 Feb. 1969	
3--7-69	Application for Order to Show Cause, filed by United States on Dec. 6, 1968, taken under Submission; Motion to Strike and/or Dismiss Application for Order to Show Cause filed by Defendants on Dec. 11, 1968, taken under Submission; Motion filed by Defendants on 9 Jan. 1969, for rehearing of arguments on Motion of Defendants seeking approval of Proposed Construction of Toulminville School, taken under Submission; and Motion to Quash or Limit subpoena duces tecum served on William B. Crane is GRANTED, Minute Entry No. 25170. Copy of M.E. 25170 mailed on Mar. 17, 1969, to Messrs. Jack Greenberg, Charles H. Jones, Jr., Vernon Crawford, Abram L. Philips Jr., Frank Dunbaugh, Walter Gorman, Vernol R. Janesn Jr., Ralph Kennamer, Pierre Pelham, and Miss Frankie Fields	
3-12-69	Motion filed Mar. 12, 1969, by the United States, Plaintiff-Intervenor, to Supplement the Record of the March 7, 1969, Hearing, with Certificate of Service	
3-14-69	Order of the Court that the Defendant School Board's Motion for Reconsideration Court's Order of Dec. 20, 1968, in which the Court DENIED School Board's Application for New Construction for the Toulminville High School is GRANTED and COURT further ORDERED that Application for New Construction of the Toulminville High School is GRANTED, Min. Entry No. 25217. Copy of M.E. 25217 mailed on Mar. 17, 1969, to Messrs. Jack Greenberg, Charles H. Jones Jr., Vernon Z. Crawford, Abram L. Philips Jr., Frank Dunbaugh, Walter Gorman, Vernol R. Jansen Jr., Ralph Kennamer, Pierre Pelham, and Miss Frankie Fields	
3-27-69	Affidavit of J. Howe Hadley	
3-28-69	TRANSCRIPT OF HEARING HELD ON MAY 7, 1968; DOCUMENTS FILED ON FEB. 20, 1968, MARCH 4, 1968, and APR. 22, 1968, IN REFERENCE TO THE BUILDING OF TOULMINVILLE HIGH SCHOOL AND HOARD ELEMENTARY SCHOOL; AND DOCUMENTS FILED ON DEC. 6, 1968, AND THEREAFTER, INCLUDING A DOCUMENT FILED ON MAR. 27, 1969, MAILED TO U.S. COURT OF APPEALS, FIFTH CIRCUIT, NEW ORLEANS, LA. (MEMO: NUMBER OF FINAL PAGE OF THIS TRANSCRIPT,INCLUDING CLERK'S CERTIFICATE IS 3052).	
3-27-69	Order of the Court on the Show Cause requested by the Plaintiff-Intervenor, United States of America,as to why the School Board shall not be held in civil contempt; Defendant's Motion to Strike or alternatively to DISMISS the application for a show cause order is DENIED; and 30 days from receipt of this order School Board shall file reports required by Sections IV D 5 and IV G of Court's Decree of May 13, 1968, Min. Entry No. 25274. On Mar. 29, 1969, copy of this order mailed to Vernon Z. Crawford and Miss Frankie L. Fields; Charles H. Jones Jr., Michael Davidson, and Jack Greenberg; Vernol R. Jansen Jr.; Stephen J. Pollak; Frank M. Dunbaugh and Walter Gorman; Abram L. Philips Jr. and James D. Brooks; Pierre Pelham; and Ralph Kennamer.	

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DATE	PROCEEDINGS	Date Judgm
5-8-69	Amended Petition of the Board of School Commissioners of Mobile County, Ala., for Temporary and Permanent Injunctive Relief filed May 8, 1969, against R. L. Dawson and Percy L. Ely	
5-12-69	Motion Filed May 12, 1969, by the Respondents, American Friends Service Committee, Bill Rosser, and David Jacobs, to Dismiss Petition	
5-12-69	Motion Filed May 12, 1969, by the Respondents, American Friends Service Committee, David L. Jacobs, and Bill Rosser To Set Aside Show	
5-12-69	Hearing Set for this Date Continued to May 13, 1969, at 1:00 P.M. at the request of the Attorneys for the Plaintiffs and Attorneys for Noble Beasley and Neighborhood Organized Workers	
5-13-69	Motion to Dismiss Cross-Complaint filed by Respondents, Noble Beasley and Neighborhood Organized Workers, Affidavit filed by Noble C. Beasley in Support of Motion to Dismiss Cross-Complaint	
5-13-69	Motion filed on May 13, 1969, by the Plaintiffs to Dismiss Petition	
5-13-69	Affidavits filed in open court on May 13, 1969, by the Plaintiff-Intervenor, United States of America	
5-13-69	Supplement to Motion to Dismiss and Presentation of Affirmative Defense Filed in Open Court on May 13, 1969, by Respondents, American Friends Service Committee, David L. Jacobs Jr., and William Rosser	
5-13-69	Affidavits filed in open court on May 13, 1969, by the American Friends Service Committee Inc., et al	
5-13-69	Affidavits filed in open court on May 13, 1969, by the Defendants, Board of School Commissioners, e t al	
5-14-69	Order of Court (Min. Entry No. 25434) relative to service of Petition to Interplead Additional Defendants filed on May 8, 1969, returned, executed,	
5-14-69	Renewal of following motions filed by respondents American Friends Service Committee, et al.: 1. Motion to dismiss petition; 2. Supplement to motion to dismiss and presentation of affirmative defense; 3. Motion to set aside show cause order.	
5-14-69	Brief in support of "motion to dismiss petition', of "supplement to motion to dismiss and presentation of affirmative defense", and of "motion to set aside show cause order", filed by American Friends Service Committee and Bill Rosser and David L. Jacobs,	
5-14-69	Memorandum filed May 14, 1969, by the United States of America on the May 8, 1969, Petition of the Board of School Commissioners, with Certificate of Service	
5-14-69	Counter-Affidavits filed on May 14, 1969, by Noble C. Beasley and Neighborhood Organized Workers, with Certificate of Service.	
5-14-69	Affidavit of James A. McPherson filed by the Board of School Commissioners of Mobile County, et al	
5-14-69	Affidavit of Sam H. Shout filed by the Board of School Commissioners of Mobile County, et al	
5-14-69	Objection and Motion to Strike filed on May 14, 1969, by Respondents, American Friends Service Committee, et al	
5-14-69	Transcript of Hearing held on May 12 and 13, 1969, filed by the Court Reporter	

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS
3-19-69	Notice of Appeal filed Mar. 19, 1969, by the United States, Plaintiff-Intervenor, appealing from the order and opinion granting Defendant's Application for New Construction of the Toulminville High School
3-24-69	Notice of Appeal filed Mar. 24, 1969, by the Plaintiffs, appealing from the order granting Defendant's Application for construction of school at Toulminville
4--7-69	Order of the Court permanently enjoining the DEFENDANTS from discriminating on the basis of race or clor in the operation of the school system; that all rural schools shall continue to operate under the freedom of choice desegregation plan for the school year 1969-70; setting the Choice Period from Apr. 14, 1969, and ending 12 May 1969; approval of area attendance zones as proposed by the School Board;etc., Minute Entry No. 25342. Copy of M.E. 25342 mailed on 9 April 1969 to Messrs. Jack Greenberg, Charles H. Jones, and Michael Davidson; Vernon Z.Crawford and Miss Frankie Fields; Vernol R. Jansen Jr.; Frank M. Dunbaugh and Walter Gorman; Abram L. Philips Jr. and James D. Brooks; Ralph Kennamer; Pierre Pelham; and Stephen J. Pollak
4-23-69	**Motion filed by plaintiff to require defendant Board of School Commissioners to submit within 30 days a plan of faculty desegregation,**
4-24-69	Order of the Court granting Additional Time for Defendant,School Board, to preare and file reports as set forth in Court's Order of Mar. 27,1969, and School Board given to May 9, 1969, to file report with the Court, Min. Entry No. 25394. Copy of M.E 25394 mailed on 4-25-69 to Messrs. Jack Greenberg, Michael Davidson, Vernon Z. Crawford, Miss Frankie Fields, V.R. Jansen, Jr., Frank M. Dunbaugh, Walter Gorman, A. L. Philips Jr., James D. Brooks, Ralph Kennamer, Pierre Pelham, and Stephen J. Pollak.
5--2-69	**Motion to require defendant to submit plan for faculty desegregation filed by plaintiff on 4-23-69 ARGUED, and taken under SUBMISSION.**
5--7-69	**Order of the Fifth Circuit Court of Appeals received May 7, 1969, GRANTING Appellant's Motion for Reconsideration of Fifth Circuit Court's Order of March 20, 1969, and Appellants' motions for Injunction pending appeal are GRANTED.**
5-5-69	Motion to require defendants to submit a plan for faculty desegregation filed by the United States of America, Plaintiff-Intervenor
5-8-69	**Petition of the Board of School Commissioners of Mobile County, Ala., for Temporary and Permanent Injunctive Relief filed May 8, 1969, against American Friends Service Committee, Neighborhood Organized Workers (NOW), Bill Rosser, David L. Jacobs, and Noble Beasley**
5-8-69	**Order of the Court setting the Petition for Temporary and Permanent Injunction for May 12, 1969, at 10:00 A.M., Minute Entry No. 25,434. Copy of M.E. No. 25,434 mailed on May 8, 1969, to Messrs. Jack Greenberg and Michael Davidson; Vernon Z. Crawford and Frankie Fields; V. R. Jansen Jr.; Frank M. Dunbaugh and Walter Gorman; Abram L. Philips Jr. and James D. Brooks; and Ralph Kennamer; and Pierre Pelham; and Stephen J. Pollak.**

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D Jud
5-14-69	Notice of Motion and Motion for leave to intervene as plaintiff filed by Alabama State Teachers Association, Inc., with proposed complaint attached,	
5-16-69	Order entered adding R. L. Dawson and Percy L. Ely as parties defendant and directing that they appear and show cause why relief should not be granted by answering said petition for injunctive relief by affidavit only, to be filed with the Clerk of this Court on or before Wednesday, May 21, 1969 at 12 o'clock noon, and that the U.S. Marshal serve a copy of the petition and amendment to interplead additional defendants filed 5-8-69 with a copy of this order on said defendants, M/E No. 25478.	
5-16-69	Certified copy of order, together with copy of petition and amendment to interplead additional defendants filed on 5-8-69 given to U.S. Marshal for service on each defendant,	
5-16-69	Motion filed May 16, 1969, by Board of School Commissioners of Mobile County to Strike certain affidavits filed by U.S. Department of Justice, with Certificate of Service	
5-16-69	REPORT TO THE COURT FILED BY THE DEFENDANT, BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, with Certificate of Service	
5-16-69	Order by the Court directing that R.L.Dawson and Percy L.Ely be made party Defendants; directing that Dawson & Ely to appear and show cause why such relief should not be granted; and directing that the U.S. Marshal serve R. L. Dawson and Percy L. Ely, Min. Entry No. 25478. Copy of M.E. 25478 mailed on May 16, 1969, to Messrs. Vernon Z. Crawford, Johathan Shapiro, Vernol R. Jansen Jr., Frank M. Dunbaugh and Walter Gorman, Abram L. Philips Jr., George W. Dean, and Reber F. Boult Jr.	
5-16-69	Preliminary Injunction issued by the Court against Bill Rosser, David L. Jacobs, American Friends Service Committee and other persons in active concert and participation with these parties defendant, etc., Min. Entry No. 25480. On May 20, 1949, copy of M.E. 25480 mailed to Messrs. Jonathan Shapiro, Vernon Z. Crawford, Vernol R. Jansen Jr., Frank M. Dunbaugh, Walter Gorman, Abraml L. Philips Jr., James D. Brooks, Ralph Kennamer, Pierre Pelham, Stephen J. Pollak, George W Dean, and Reber F. Boult Jr., and Miss Frankie Fields	
5-16-69	Writ issued to the U.S. Marshal with copy of M.E 25480 attached for service on Bill Rosser, David L. Jacobs, and American Friends Service Committee	
5-19-69	Notice of Appeal filed on May 19, 1969, by American Friends Service Committee, David L. Jacobs, and Bill Rosser. Copy of Notice of Appeal mailed on May 20, 1969, to Miss Frankie Fields, and Messrs. Jonathan Shapiro, Vernon Z. Crawford, Vernol R. Jansen, Jr., F Frank M. Dunbaugh, Walter Gorman, Abram L. Philips Jr., James D. Brooks, Ralph Kennamer, Pierre Pelham, and Stephen J. Pollak.	
5-19-69	Motion filed May 19, 1969, by American Friends Service Committee, David L. Jacobs, and Bill Rosser for Stay, with Certificate of Service.	

(SEE NEXT PAGE) (SEE NEXT PAGE)

DATE	PROCEEDINGS	Date Ord Judgment
5-19-69	Motion for Stay filed on May 19, 1969, by American Friends Service Committee, et al, is DENIED, Minute Entry No.25487. Copy of M.E. 25487 mailed on May 20, 1969, to Miss Frankie Fields, and Messrs. Jonathan Shapiro, Vernon Z.Crawford, Vernol R. Jansen Jr., Frank M. Dunbaugh and Walter Gorman, Abram L. Philips Jr., James D. Brooks, Ralph Kennamer, Pierre Pelham, Stephen J. Pollak, George W. Dean, Charles Morgan Jr., and Reber F. Boult, Jr.	
5-19-69	Cost Bond on Appeal in sum of $250.00 filed on May 19, 1969, by American Friends Service Committee, et al	
5-21-69	Writ re Preliminary Injunction returned, executed by USM as to BILL ROSSER, DAVID L. JACOBS & THE AMERICAN FRIENDS COMMITTEE,	
5 -20-69	Answer of Percy L. Ely to Petition for Injunctive Relief filed with affidavit,	
5 -21-69	Motion and Presentation of Defense and affidavit of Rev. R. L. Dawson filed,	
(5-19-69)	Writ RE Petition for injunctive relief returned by USM executed as to R. L. DAWSON & PERCY L. ELY,	
5-26-69	Amendment and supplement to brief in support of Motion and Presentation of defense filed by respondents,	
6--4-69	JUDGMENT of the U.S. Court of Appeals for the Fifth Circuit REVERSING the order of the U.S. District Court and cases are REMANDED to the District Court for further proceedings in accordance with the opinion of the U.S. Court of Appeals. Copy of opinion attached.	
6--6-69	Motion filed May 5, 1969, by United States, Plaintiff-Intervenor, to Require Submission of Faculty Desegregation Plan is SUBMITTED WITHOUT ARGUMENT	
6--6-69	Motion filed May 16,1969, by Board of School Commissioners of Mobile County to STRIKE CERTAIN AFFIDAVITS is SUBMITTED WITHOUT ARGUMENT	
5-23-69	Order of the U S. Court of Appeals for the Fifth Circuit GRANTING Appellants' Motion for Stay of Injunction Pending Appeal	
6-10-69	Record on appeal sent to U.S. Court of Appeals, Fifth Circuit, beginning with 8th day of May, 1969 docket entry to May 23, 1969, (page 3053 to 3353) a total of 300 pages. Copies were sent to the attorneys of the above entries that were sent to fifth circuit along with page numbers,	
6-16-69	Verified Bill of Costs in sum of $1372.00 as costs incurred in U.S. Court of Appeals filed by plaintiffs with certificate attached,	
6-17-69	Verified Bill of Costs in sum of $1360.20 as costs incurred in U.S. Court of Appeals filed by plaintiff-intervenor with certificate attached,	
6-27-69	Motion for leave to intervene as plaintiff filed by Ala. State Teachers Association Inc. on 5/14/69 argued and taken under submission,	
6-23-69	Order of the Fifth Circuit Court of Appeals on the Petition For Rehearing in which the Fifth Circuit DENIED the Petition for Rehearing and Motion of Appelles for a Stay of Execution and Enforcement of Judgment is DENIED	

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judge
7/1/69	Notice of taking of deposition of DR. JOSEPH HALL and MR. J. J. JORDAN filed by defendant, subpoenas issued,	
7-2-69	Judgment of the U.S. Court of Appeals for the Fifth Circuit ordering that "appellees' motion for stay of execution and enforcement of the judgment and mandate entered in the above causes pending the petition for writ of certiorari to be filed in the Supreme Court of the United States, is hereby DENIED."	
7-10-69	DESEGREGATION PLAN FOR THE MOBILE COUNTY PUBLIC SCHOOLS filed by the Division of Equal Educational Opportunities, Office of Education of The Department of Health, Education and Welfare for the operation of schools in Mobile School District, pursuant to Mandate of U.S.Court of Appeals of 6-3-69, with accompanying maps.	
7-10-69	Copies of plan furnished to Mr. Abe Philips, Mr. Vernon Crawford, Mr. Vernol R. Jansen, Jr., U. S. Attorney, and Mr. Pierre Pelham,	
7-16-69	Notice of taking depositions of William B. Crane and James A. McPherson on July 23, 1969 filed by plaintiff-intervenor,	
7-17-69	Motion filed by plaintiffs for court order to immediately implement the plan of desegregation formulated by HEW filed on July 10, 1969, with certain modifications,	
7-18-69	Motion to strike and expunge from the Record the Report and Proposed Plan of Desegregation filed by HEW on July 10, 1969, filed by defendants Board of School Commissioners,	
7-21-69	Objections and Suggested Amendments to proposed plan of desegregation of HEW filed by defendant Board of School Commissioners,	
7-22-69	Motion to continue depositions of McPherson and Crane, presently set for July 23, 1969, filed by defendants.	
7-22-69	Motion in opposition to defendants' alternative desegregation plans and for an Order requiring defendants to adopt and implement the desegregation plan proposed by the HEW, filed by United States, plaintiff-intervenor,	
7-23-69	Depositions of DR. JOE HALL and JESSE J. JORDAN filed by defendant Mobile County School Board,	
7-25-69	Motion in opposition to defendants' alternative desegregation plans filed by plaintiffs, moving for an order dismissing or denying the Suggested Amendments and Objections as filed by Board of School Commissioners on July 21, 1969.	
7-29-69	Application for intervention as parties defendant filed by MOBILE COUNT COUNCIL OF PARENT-TEACHER ASSOCIATIONS, et al.	
7-22-69	Motion that depositions not be taken, filed by the defendants,	
7-22-69	Motion filed July 22, 1969, by Defendants, Board of School Commissioners, to Continue Depositions of James A. McPherson and William B. Crane is granted.	
7-22-69	Motion filed July 22, 1969, by Defendants, Board of School Commissioners, that Depositions of William B. Crane and James A McPherson NOT BE TAKEN is GRANTED.	
7-29-69	For assistance and information of the court, filed by defendant, (CONTINUED ON NEXT PAGE)	

DATE	PROCEEDINGS	Date Order Judgment N
8--1-69	Motion filed July 18, 1969, by Defendants, Board of School Commissioners, to Strike and Expunge from the record the report and proposed plan of desegregation submitted by the Office of Education of the Department of Health, Education and Welfare is DENIED.	
8--1-69	Motion filed July 17, 1969, by Plaintiffs, Birdie Mae Davis, et al, to Accept H.E.W. Plan of Desegregation with Modifications is DENIED.	
8--1-69	Motion filed July 21, 1969, by Defendants, Board of School Commissioners, objecting to the proposed plan of desegregation filed by the Office of Education of the Department of Health, Education and Welfare and suggesting amendments to the plan of desegregation filed by the Office of Education of the Department of Health, Education and Welfare is DENIED.	
8--1-69	Motion filed July 22, 1969, by the United States in Opposition to Defendants' Alternative Desegregation Plans and for an Order requiring Defendants to Adopt and Implement the Desegregation Plan Proposed by the Office of Education is DENIED.	
8--1-69	Motion filed July 25, 1969, by Plaintiffs, Birdie Mae Davis, et al, in Opposition to Defendants' Alternative Desegregation Plans is DENIED.	
8--1-69	Notice of Motion, and Motion for leave to intervene as plaintiff filed by the NATIONAL EDUCATION ASSOCIATION, INC., with proposed Complaint in Intervention attached,	
8--1-69	Order of the Court and DECREE directing plan of desegregation, Min. Entry No. 25826. Copy of Min. Entry 25826 mailed on Aug. 1, 1969 to Miss Frankie Fields; Messrs. Jack Greenberg, Jonathan Shapiro, and Michael Davidson; Mr. Vernon Z. Crawford; Mr. C. S. White Spunner Jr., the United States Attorney; Messrs. Frank M. Dunbaugh and Walter Gorman; Messrs. Abram L. Philips Jr. and James D. Brooks; Mr. Ralph Kennamer; Mr. Pierre Pelham; Mr.Stephen J. Pollak; Mr. George W. Dean; Messrs. Charles Morgan Jr. and Reber F. Boult Jr.; Mr. Solomon S. Seay Jr.; and Mr. Samuel L. Stockman.	
8--6-69	Notice of Appeal Filed on Aug. 6, 1969, by the Plaintiffs, with Certificate of Service	
8--6-69	Designations of Record on Appeal and Request for Immediate Certification and Transmittal filed on Aug. 6, 1969, by the Plaintiffs, with Certificate of Service.	
8-11-69	Record on Appeal mailed on Aug. 11, 1969, to the U.S. Court of Appeals, Fifth Circuit, New Orleans, La. (MEMO: NUMBER OF FINAL PAGE OF THIS TRANSCRIPT, INCLUDING CLERK'S CERTIFICATE IS 3746).	
9-17-69	Order of the Court directing that Exhibits offered in 1968 and 1967 be returned to party offering said exhibits, Min. Entry No. 25959. Copy of M.E. 25959 mailed on Sep. 19, 1969, to Messrs.Jack Greenberg, Michael Davidson, and Johathan Shapiro; Vernon Z.Crawford and Miss Frankie Fields; Messrs. Charles S. White Spunner Jr., Frank M. Dunbaugh, Walter Gorman, Abram L. Philips Jr. and James D. Brooks, Ralph Kennamer, Pierre Pelham, Stephen J. Pollak, George W. Dean, Charles Morgan Jr., Reber F. Boult Jr., and Solomon S. Seay, Jr., and Samuel L. Stockman.	

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	J
10-6-69	Application for an Order to Show Cause filed by plaintiff, with certificate of service attached, and proposed order,	
10-13-69	Report to the Court filed on 13 Oct. 1969 by the Defendants, Board of School Commissioners of Mobile Coujnty, et al, without Certificate of Service. On 13 Oct. 1969 the Clerk forwarded to All Attorneys in this case a copy of this Report filed 10-13-69	
10-20-69	Motion to Dismiss Application for Order to Show Cause filed by Defendants, The Board of School Commissioners of Mobile County, et al,	
10-27-69	Memorandum in opposition to School Board's Motion to Dismiss Application for an order to show cause and Motion for Attorneys Fees filed by Plaintiffs,	
11-7-69	Report to the court for the information of the court filed by Board of School Commissioners of Mobile County,	
11-10-69	Application for an order to show cause filed by Plaintiff-intervenor, The United States of America,	
11-17-69	Request for execution for amount of court costs on appeal due in sum of $1,372.00 filed by attorney for plaintiffs,	
	Writ of execution issued,	
11-20-69	Report to the Court of November 20, 1969 filed by Board of School Commissioners of Mobile County, Alabama,	
11-20-69	Interrogatories directed to Mr. ABRAM PHILIPS, attorney for defendants filed by plaintiffs,	
11-20-69	Motion for clarification of the Court's Order filed by defendants BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL,	
11-26-69	REPORT TO THE COURT dated November 26, 1969 filed by defendants, BOARD OF SCHOOL COMMISSIONERS,	
11-26-69	Writ of Fieri Facias returned, NOT EXECUTED, Writ of Garnishment to be issued,	
12--1-69	Suggested Desegregation plan for all metropolitan schools located east of I-65, for implementation for the 1970-71 school term, filed by defendant School Board, pursuant to Court's decree of August 1, 1969, with Maps 1, 2 and 3 attached.	
12-4-69	Order entered by Court allowing defendant School Board to substitute corrected map, designated Map # 1-A, for Map # 1 submitted with suggested desegregation plan filed 12-1-69, (Minute Entry No. 26,285).	
	Certified copy of judgment of U.S.Court of Appeals, Fifth Circuit, received, AFFIRMING order of District Court appealed from, with directions to desegregate the eastern part of the metropolitan area of the Mobile County School System and to otherwise create a unitary system in compliance with other provisions and conditions of order of court then entered, and taxing costs on appeal in appeals court against appellee, School Board.	
	Copy of Court's opinion received from Fifth Circuit and filed,	
12-5-69	Copy of School Board's desegregation plan and copy of order substituting map mailed to following attorneys: Davidson, Crawford, Fields, Gorman, White-Spunner and Pierre Pelham, and Abe Philips.	
12-30-69	Application for an Order to Show Cause, filed October 6, 1969 by plaintiffs Oct. 6, 1969 DENIED,	
	Motion to Dismiss Application for Order to Show Cause, filed by the defendants, Board of School Commissioners of Mobile County DENIED,	

DATE	PROCEEDINGS	Date Order Judgment No
12-30-69	Order entered that the motion for attorney's fees filed by the Plaintiff is DENIED, see M/E Number 26,410,	
1-2-70	Copy of Minute Entry Number 26,410 sent to each attorney,	
1-2-70	Affidavit for issuance of Garnishment against First Nat'l Bank of Mobile, Merchants National Bank of Mobile and American National Bank of Mobile on judgment for costs filed by plaintiffs,	
1-2-70	Writs of Garnishment issued against EACH of the following named banks, and notice issued to defendant in EACH instance: FIRST NATIONAL BANK OF MOBILE, MERCHANTS NATIONAL BANK OF MOBILE and AMERICAN NATIONAL BANK OF MOBILE,	
1--5-70	Writs of Garnishment issued on 1/2/70 and notices to defendant of issuance returned executed by U.S. Marshal,	
1--5-70	Motion filed by plaintiffs for order of court to limit Writs of Garnishments issued on 1/2/70 to sum of $1,372.00 being the amount by judgment of the U. S. Court of Appeals, Fifth Circuit,	
1--2-70	Motion to require service of desegregation plan filed by plaintiffs,	
1--6-70	Motion filed by defendants for order of court limiting garnishments to sum of $1,372.00 to be held by each bank GRANTED. Notices mailed to banks, and to Abe Philips, Attorney for defendants.	
1-7-70	Notice of granting of defendants' motion mailed to attorneys Davidson, Crawford, Pelham and White-Spunner,	
1-6-70	ANSWER to garnishment served on the bank , The First Nat'l Bnk of Mobile on January 5, 1970 filed,	
1-7-70	Copy of Answer sent to Michael Davidson,	
1-7-70	ANSWER to garnishment served on the American National Bank & Trust Company filed,	
1-8-70	Copy of Answer sent to Michael Davidson,	
1-13-70	Copy of bill of costs in amount of $25.00 taxed against appellee School Board by Circuit Court of Appeals received and filed,	
1-15-70	A Desegregation Plan for the Mobile County School System, filed by the Division of Equal Educational Opportunities, U. S. Office of Education, Atlanta, Georgia,	
1-22-70	Certified copy of Court's Opinion-Order entered by U.S.Court of Appeals forthe Fifth Circuit on January 21, 1970, directing that the order of the Supreme Court entered in the Singleton V. Jackson Municipal Separate School District et al, case, No. 26005, with respect to the deferrel of student desegregation beyond February 1, 1970 is made the judgment of the Court of Appeals, all other provisions of the order of CCA in Singleton to remain in full force and effect, received and filed.	
1-22-70	Order entered GRANTING application for intervention as parties defendant filed on July 29, 1969 by MOBILE COUNTY COUNCIL OF PARENT-TEACHER ASSOCIATIONS, et al. (Minute Entry No. 26,540-A.) Copies mailed to all attorneys of record,	
1-28-70	Order entered ORDERING Board of School Commissioners of Mobile County, to forthwith submit to the Court a revision of plans for desegregation in accord with the mandates of the Supreme Court and the Fifth Circuit Court of Appeals. (Minute Entry No. 26,553).	
.-28-70	7 certified copies of order delivered to U. S. Marshal for service on Abe Philips, Attorney, Dr. Cranford Burns, and each member of School Board.	
.-28-70	Order to School Board returned EXECUTED,	

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Ju.
	Copies of order to school board mailed to attorneys,	
1-26-70	Copy of Dissenting Opinions of Judge James P. Coleman and Judge Charles Clark filed,	
1-30-70	Response to order of court of January 28, 1970, filed by Board of School Commissioners,	
1-31-70	DECREE entered by court pursuant to reversal by Fifth Circuit Court of Appeals as directed by U. S. Supreme Court, ADOPTING area attendance desegregation plan submitted by the school board on December 1, 1969, for those school zones lying East of I-65, with the exceptions as set out in the order, to be adopted and put into effect as of FEBRUARY 1, 1970; (Minute Entry No. 26,573)	
1-31-70	Order entered re-establishing an elementary school on Dauphin Island for children living in the Island at the elementary grade level, and directing order implemented forthwith. (Minute Entry No. 26,574).	
1-31-70	Certified copy of Minute Entry No. 26,573 and 26,574 with set of Maps, Exhibits A, B and C, delivered to U. S. Marshal for service on Board of School Commissioners, C/O its Attorney, Abram L. Philips,	
1-31-70	Copies of each order mailed to attorneys of record,	
2--2-70	Certified copies of orders returned EXECUTED by U. S. Marshal.	
2--4-70	ORDER entered amending order of this court of January 31, 1970 in order to add "the majority to minority transfer policy", providing that a student attending a school in which his race is in the majority to choose to attend another school where space is available, and where his race is in the minority. (Minute Entry No. 26,588).	
2-11-70	NOTICE OF APPEAL filed by plaintiffs from order and judgment of the District Court entered on January 31, 1970.	
2-11-70	Designation of contents of record on appeal filed by plaintiffs-appellants.	
2-12-70	Copy of order of 2-4-70 and copy of notice of appeal mailed to all attorneys of record,	
2-16-70	NOTICE OF APPEAL from order and judgment entered on January 31, 1970 filed by United States of America, plaintiff-intervenor.	
2-18-70	Copy of notice of appeal filed 2-16-70 mailed to all attorneys of record, with copy of "timetable" for school desegregation appeals as set out in Singleton opinion, Part III,	
2-18-70	Petition filed by defendant School Board, asking for immediate consideration, to be allowed to maintain a 12th grade program at Trinity Gardens for remainder of this school year.	
2-19-70	NOTICE OF APPEAL filed by defendants Board of School Commissioners of Mobile County, et al. from order and judgment entered on January 31, 1970, as amended by order entered on February 4, 1970.	
2-24-70	Additional designation of contents of record on appeal filed by defendants,	
2-24-70	Affidavit testimony of James A. McPherson filed by defendant in support of its Response to Order filed on January 30, 1970.	
2-24-70	Report to the Court, filed by defendant, for the information and assistance of the court,	
2-24-70	Report to the Court filed by defendant for the purpose of advising the Court of steps taken towards implementation of its Order of January 31, 1970.	

(REVERSE OF DOCKET SHEET NO. 14)

DATE	PROCEEDINGS	Date Ord. Judgment
2--23-70	Answers to plaintiff's interrogatories filed by Defendants,	
2--25-70	Copies of Notice of Appeal filed by Defendant School Board mailed to all attorneys of record.	
	Certified record on appeal mailed to CCA, New Orleans, La.	
2-27-70	Motion to require service of desegregation plan filed on 1/2/70 by plaintiffs is GRANTED, notice mailed to Attys. Michael Davidson and Abram L. Philips, Jr.,	
3-2-70	Petition filed pertaining to Westlawn and Mertz Schools,	
	Petition filed pertaining to Mertz and Mae Eanes Schools,	
	Petition filed pertaining to Morningside School and Mae Eanes School	
	The above Petitions filed by the Mobile Co. School Board	
3-10-70	Petition for modification of court's order of January 31, 1970 with respect to maintaining a ninth grade at Mae Eanes School, filed by defendant School Board,	
3-10-70 ✓	Motion for leave to amend summons and complaint by adding thereto as party defendants, ALBERT BREWER, Governor of the State of Alabama, and MacDONALD GALLION, Attorney General of the State of Alabama, and to file supplemental complaint attacking legislative act enacted on March 4, 1970, by the State Legislature, known as the "Freedom of Choice Act, filed by plaintiffs,	
3-11-70	Certificate of service of copy of supplemental complaint and plaintiffs' brief as filed on March 10, 1070, filed by plaintiffs.	
3-11-70	Motion filed by plaintiff for an order commanding the garnishee to pay over monies and for an order condemning same,	
3-12-70	ORDER entered by court, AMENDING order of January 31, 1970, as to petitions filed on March 2, 1970 and March 10, 1970 relating to Westlawn, Mertz, Mae Eanes and Morningside, and Trinity Gardens schools for remainder of this school year. (Minute Entry No. 26760). Copies of order mailed to all attorneys of record.mpcox	
3-13-70	Petition filed by plaintiffs for order modifying decree of January 31, 1970 relating to graduating seniors and future status as senior high school of Trinity Gardens, filed by plaintiff,	
3-16-70	Motion for continuance of hearing set for 9:30 A.M. this date, filed by defendant, Mobile County Council PTA,	
3-16-70 ✓	Application for an Order to Show Cause why defendants should not be adjudged in civil contempt of this court for failing and refusing to comply with this court's decree of January 21, 1970, filed by plaintiffs,	
3-16-70	Hearing in open court on motion filed by plaintiffs on March 10,1970 for leave to amend summons and complaint by adding Brewer and Gallion, and to file supplemental complaint, and	
	ORDER entered, DISMISSING petition, and requiring School Board to follow the order of this court of January 31, 1970, as amended, within three (3) days from date, or a fine of $1,000.00 per day assessed for each such day against each member of the Board of School Commissioners. (Minute Entry No. 26,771)	
	Certified copy of order delivered to U. S. Marshal for personal service on Dr. Cranford Burns, Superintendent, and on each member of School Board.	
3-17-70	Copies of order delivered to attorneys Abe Philips, Walter Gorman, Vernon Crawford.	
3-17-70	Copies of M/E 26,771 mailed to attorneys of record, and to Hon. Gordon Madison, Assistant Attorney General of Alabama.	

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DATE	PROCEEDINGS	Dat Judg
3-12-70	Judgment of the U.S. Court of Appeals, Fifth Circuit, VACATING the preliminary injunction issued by the U.S. District Court on May 16, 1969; case remanded to the District Court in accordance with the opinion of this Court.	
3-17-70	NOTICE OF APPEAL filed by Defendant BOARD OF SCHOOL COMMISSIONERS from order dated March 16, 1970.	
3-17-70	Motion for stay of enforcement of order dated March 16, 1970, pending appeal and thereafter until appellate remedies are exhausted, filed by defendant School Board.	
3-18-70	Motion for stay of enforcement of orders of January 31, 1970 and March 16, 1970 pending the filing of an action to test Legislative Act S. 1 passed on March 4, 1970 by Alabama Legislature, filed by defendant School Board.	
	Motion for stay, filed by defendant on March 18, 1970, DENIED.	
3-19-70	Return of Marshal filed, showing service of order of March 16, 1970 on Superintendent and each member of School Board by personal service.	
3-20-70	Certified copy of Order of Circuit Court of Appeals entered on March 19, 1970 DENYING appellants' motion for stay of orders of District Court dated January 31, 1970 and March 16, 1970 received and filed,	
3-23-70	Response to petition of plaintiffs filed on March 13, 1970 requesting that Trinity Gardens School be continued as a school serving grades 7 through 12 filed by defendant School Board.	
3-23-70	Motion to allow modification of Order of Court of January 31, 1970 relative to ninth grade at Prichard Junior High School, Vigor High School and Mobile County Training School, filed by defendant School Board,	
3-23-70	Motion to modify court order of January 31, 1970 relative to Leinkauf Elementary School, Hall Junior High School, Old Shell Road Elementary School, Caldwell Elementary School and Emerson Elementary School, filed by defendant School Board,	
3-23-70	Motion to modify court order of January 31, 1970 relative to Hall School, Craighead School, Williamson High School, Maryvale School, Woodcock Elementary School, Arlington Elementary School, filed by defendant School Board,	
3-26-70	Withdrawal of Notice of Appeal from order dated March 16, 1970 filed by defendant School Board.	
3-27-70	Objection to supplementing the record on appeal by furnishing of certain maps and records and statistical tables by appellant United States Department of Justice filed by defendants,	
3-30-70	Copy of order entered by Fifth Circuit Court of Appeals directing district court to supplement its findings of fact in certain matters by filing within 20 days 9 items of information, and remanding case for purpose stated, entered by CCA 3-25-70.	
3-31-70	Order entered by Thomas, Judge, pursuant to Order of CCA directing defendant Board of School Commissioners to furnish the court the information set out in 9 paragraphs of CCA order not later than April 10, 1970 at 3:00 P. M. (Minute Entry No. 26,887)	
	Copy of order mailed to all attorneys of record. WJO'C.	
4--3-70	Motion filed by plaintiff on 3/11/79 for an order commanding the garnishee to pay over monies and for an order condemning same is GRANTED	

DATE	PROCEEDINGS	Date Ord Judgment
4--3-70	Petition filed by plaintiffs on 3/13/70 for order modifying decree of Jan. 31, 1970 relating to seniors attending Trinity Gardens High School is DENIED.	
4--3-70	Response to plaintiff's motion for Order relative to Trinity Gardens School filed by defendants on 3/23/70 is DENIED.	
4--3-70	Motion to allow modification of Order of Court of Jan. 31, 1970 relative to ninth grade at Prichard Junior High School, etc., filed by defendants on 3/23/70 is DENIED.	
4--3-70	Motion to allow modification of Order of Court of Jan. 31, 1970 relative to Leinkauf Elementary School, etc., filed by defendants on 3/23/70 is DENIED.	
4--3-70	Motion to allow modification of Order of Court of Jan. 31, 1970 relative to Hall School, etc., filed by defendants on 3/23/70 is DENIED	
	Notice of all rulings of court of Apr. 3, 1970 mailed to all attorneys of record,	
4--6-70	Motion to establish procedures on remand filed by plaintiffs,	
4--7-70	ORDER entered directing Garnishee, The First National Bank of Mobile to pay into Court the sum of $1,372.00 being the amount of costs owed by the defendants to the plaintiff and also DISMISSING garnishment proceedings as to Garnishees, The American National Bank & Trust Company of Mobile and the Merchants Nat'l Bank of Mobile, see M/E 26,924,	
4-10-70	Copy of M/E 26,924 mailed to attorneys of record and to Officer of each bank this date,	
4-10-70	AFFIDAVIT filed by JAMES A. McPHERSON, Associate Superintendent of Mobile County Alabama Public School System, in response to Order of District Court dated March 31, 1970 requiring school board to furnish certain information, with exhibits attached,	
4-13-70	Order received from CCA DENYING motion of appellants to enjoin the transfer pending appeal, of students from Trinity Gardens School to Blount School under Jan. 31, 1970 order.	
	Order received from CCA DENYING motion of appellants to require the School Board to supplement the record, since matters sought will be included in supplemental findings to be filed by district court.	
4-14-70	Motion to establish procedures on remand, filed by plaintiffs on April 6, 1970, DENIED. Notices mailed to attorneys.	
4-14-70	SUPPLEMENTAL FINDINGS OF FACT entered by Judge Daniel H. Thomas in response to order of appellate court entered March 25, 1970. (Minute Entry No. 26,964).	
	Certified copy of Findings of Fact mailed to Fifth Circuit Court of Appeals, with original affidavit of James A. McPherson and attached exhibits.	
4-15-70	Copy of Supplemental Findings of Fact mailed to attorneys of record.	
6--2-70	Petition to implement order of desegregation entered by court on August 1, 1969 regarding Saraland (grades 1-5), Lee (grades 1-5), Adams (grades 1-7), and Satsuma (grades 8-12), filed by Board of School Commissioners,	
6--2-70	Petition to implement order of desegregation entered by court on August 1, 1969 regarding entire rural portion of the school system, including the following schools: Alba (grades 1-12), Burroughs (grades 1-6), Davis (grades 1-6), Dixon (grades 1-6),	

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DATE	PROCEEDINGS	Dat Judg
	Grand Bay (grades 1-6), Griggs (grades 1-6), Hollingers Island (grades 1-6), Mobile County High (grades 7-12), St. Elmo (grades 7-8) and Theodore (grades 7-12), filed by Board of School Commissioners,	
6--2-70	Petition to implement order of desegregation entered by court on August 1, 1969 regarding that part of the netropolitan portion of the school system lying west of Interstate Highway 65, including the area served by the following schools: Dickson (grades 1-6), Hillsdale (grades 6-8), Shaw (grades 1-5), Scarborough, (grades 6-8), Orchard (grades 9-12), and Will (grades 1-5), filed by Board of School Commissioners,	
6-11-70	Received from the office of Judge Griffin B. Bell the Supplemental Record on Appeal in Case No. 29332 (Fifth Circuit Court of Appeals Number) which recor d was filed in the Fifth Circuit on Aoril 1, 1970. The documents were forwarded to the Clerk of the Fifth Circuit by Clerk of District Court by letter of trransmittal dated March 25, 1970. The documents received from Judge Bell's office are as follows: 1. Projected Enrollment under zone lines offered by the United States on Jan. 27, 1970. 2. Map No. 1 - Elementary 3. Map No. 2 - Middle Schools. 4. Map No. 3 - High Schools. (MEMO: This item was placed in red manila file)	
6-11-70	Judgment from U. S. Court of Appeals, Fifth Circuit, REVERSING U. S. District Court and remanding cause to District Court, issued as Mandate June 8, 1970,	
6-15-70	Memorandum in opposition to school board's petition to modify attendance zones and grade structures filed by plaintiffs,	
6-12-70	DECREE entered by court pursuant to reversal by Fifth Circuit Court of Appeals, ordering that the area attendance zones offered by U. S. Dept. of Justice on 1/27/1970 be assigned as the school zones under which the public school system will operate beginning with the 1970 Fall semester; further that the faculty and staff shall be assigned on a 60% white and 40% negro ratio; further that school board shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority, etc., further that school board is directed to continue to operate transportation, extra curricular activities and school facilities on a non-discriminatory basis, see Minute Entry No. 27,229 copy of decree mailed to all attorneys on June 13, 1970.	
6-29-70	Memorandum of United States in response to defendants' petitions to modify attendance zone lines and grade structures filed,	
7--2-70	Order entered DENYING petition of defendant Board of School Commissioners to rearrange the attendance zones and grade structure of DIXON, HILLADALE, ORCHARD, SCARBOROUGH and WILL SCHOOLS as they were specified in the Court's order of August 1, 1969. (Minute Entry No. 27,316).	
7--2-70	Order entered GRANTING petition of School Board to amend its order of August 1, 1969, as it concerns:	

DATE	PROCEEDINGS	Date Ord. Judgment
	Saraland School - Grades 1-5 Lee School - Grades 1-5 Adams School - Grades 6-8 Satsuma School - Grades 9-12 students at which schools will attend as designated regardless of race. (Minute Entry No. 27,317).	
7--2-70	Copies of each above order mailed to attorneys of record.	
7-7-70	ORDER entered that the school "DIXON" in the order of July 2, 1970 in this cause should be corrected to read "DICKSON" (Min. Entry No. 27342)	
7-9-70	Copies of Min/ Entry No. 27342 mailed to attorneys of record,	
7-13-70	ORDER entered by court AMENDING court's order of June 12, 1970 in the following respect: "Pursuant to Footnote "4" of the opinion of the Fifth Circuit Court of Appeals, entered on 6/8/70 the area attendance zones for the 1969-70 school year are amended as shown by the maps attached hereto marked Exhibit 1, 2, and 3 for the elementary, middle school and high schools respectively, Exhibit 4 attached hereto shows the feeder pattern for the entire school district, In all other respects the Order of June 12, 1970, remains in full force and effect. see Min. Entry No. 27,371	
7-13-70	Copy of court's order with Exhibits 1, 2, 3, and 4 delivered to Abe Philips, C. S. White-Spunner, Jr., Vernon Z. Crawford and Wm. A. Kimbrough, Jr. this date,	
7-13-70	Copy of court's order and Exhibit 4 only mailed to attorneys, Michael Davidson, Walter Gorman, Ralph Kennamer, Pierre Pelham, Solomon S. Seay, Jr., this date,	
7-16-70	Notice of Appeal, filed by Birdie Mae Davis, et al, plaintiffs,	
7-27-70	Projected Enrollment Date Under Zones Lines for High Schools, Middle Schools, and Elementary Schools	
7-28-70	Notice of Appeal filed by Plaintiff-Intervenor, United States of America,	
7-28-70	Order entered DENYING modification in reference to Griggs, Davis and Burroughs Schools as requested by defendants June 2, 1970, M/E No. 27,464 Order entered in regard to establishing bi-racial committee to serve in advisory capacity to School Board, Min. Entry No. 27,465, Copies of Min. Entry No. 27,464 and 27,465 mailed to attorneys,	
7-29-70	Designation of contents filed by plaintiffs,	
7-30-70	Designation of Record on Appeal and Request for Immediate Certification and Transmittal, filed by Plaintiff-Intervenor, United States,	
7-30-70	Order entered making certain changes in July 13, 1970 order pertaining to Dodge School, Dickson School and Westlawn, Min. Entry No. 27,472, Copies mailed to attorneys of record/Exhibits 1,2,3 (maps)	
7-31-70	Record on appeal mailed to U. S. Court of Appeals, New Orleans, La., with 3 exhibits (3maps), and letter of transmittal, copies of which were mailed to attorneys, Designation of Record on Appeal, filed by defendants; Supplemental Record on Appeal, mailed to U. S. Court of Appeals, New Orleans, La.,	

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DATE	PROCEEDINGS	Da Judg
8--5-70	OPINION-ORDER on motion for injunctive relief pending application for certiorari, or in the alternative, to vacate the order of the district court entered on July 13, 1970 in implementation of CCA decision of June 8, 1970 as to student assignment. By order of CCA injunctive relief DENIED, and order of July 13, 1970, modified, establishment of a bi-racial advisory committee to the school board ordered established forthwith. This opinion and order amends and supplements CCA decision and order of June 8, 1970 and shall be considered the final order on this appeal for mandate and certiorari purposes.	
8-12-70	Order entered appointing BI-RACIAL COMMITTEE pursuant to order of this court of July 28, 1970, (Minute Entry No. 27527), committee to be composed of DR. SANFORD D. BISHOP, MR. ISOM CLEMON, MR. M. C. FARMER, MRS. H. EUGENE GIBBONS, MRS. T. C. GILL, MR. ARTHUR OUTLAW, BISHOP W. T. PHILLIPS, MR. O. B. PURIFOY, MR. H. MINGE REED, JR. and MR. BEVERLY R. WILSON, JR. (Copies of order mailed to each member by Judge Thomas).	
8-12-70	Order entered AMENDING ORDER of July 13, 1970, as amended July 30, 1970, so that ROBBINS and HAMILTON elementary schools are to be paired. (Minute Entry No. 27,528).	
8-12-70	Copies of Minute Entries 27527 and 27528 mailed to attorneys of record,	
8-17-70	Notice of Appeal from Order of July 30, 1970 filed by plaintiffs/ Birdie Mae Davis, et al, copies mailed to attorneys of record, with designation Notice of Appeal from Order of August 12, 1970 filed by plaintiffs, Birdie Mae Davis, et al, copies mailed to attorneys of record,	
8-20-70	Projected Enrollment Data for ELEMENTARY, MIDDLE and HIGH SCHOOLS broken down as to U. S. District Court Plan under order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan under order of 7/30/70, filed by court.	
8-21-70	ORDER entered that defendants are directed to report to the Court weekly as to each transfer request filed with the school authorities or School Board during said week and a report showing the disposition made to such requests, both by the professionals and the School Board (Min. Entry No. 27565)	
8-21-70	Copies of Min. Entry No. 27565 mailed to attorneys of record this date by Mr. O'Connor,	
8-28-70	Record on Appeal mailed to U. S. Court of Appeals, New Orleans, La., with letter of transmittal, copy of which was mailed to attorneys,	
8-31-70	OPINION-ORDER OF the Fifth Circuit Court of Appeals, said order dated Aug. 28, 1970, ruling as follows: 1. Middle School & High School Zone lines shall be same as those set for in July 13, 1970, order of district court 2. Elementary school zones shall be modified as follows: (a) Palmer & Glendale Schools shall be paired. (b) Council & Leinkauf Schools shall be paired. (c) Area of Whitley zone * * * that lies west of Wilson Avenue shall become a part of Chickasaw zone. (d) Area in Westlawn zone * * * that lies north of Dauphin St. shall become part of Old Shell Road school zone. 3. Counsel will confer & make facts available regarding desegregation of the school system staffs. 4. (See Other side)	

DATE	PROCEEDINGS	Date Order Judgment
	4. Students who refuse to attend the schools to which they are assigned by school board under order of District Court shall not be permitted to participate in any school activities, including the taking of examinations and shall not receive grades or credit. 4. Any time School Board desires to have changes in zone lines made, it shall give reasonable notice to the parties. ORDER OF DISTRICT COURT OF JULY 30, 1970, IS IN ALL OTHER RESPECTS AFFIRMED.	
9--1-70	Petition filed by School Board to be allowed to modify implementation of court's orders of July 13 and 30, 1970 to BE ALLOWED TO CONTINUE OPERATION OF THE SIXTH GRADE AT WESTLAWN SCHOOL. (Court orders eleminated the sixth grade at Westlawn School and reassigned sixth grade students in Westlawn zone to Washington Junior High School and Sidney Phillips Junior High School.) Petition filed by School Board to be allowed to modify implementation of court's orders of July 13 and 30, 1970 to be ALLOWED TO CONTINUE OPERATION OF THE SIXTH GRADE AT MORNINGSIDE SCHOOL. (Court order aleminated the sixth grade at Morningside School and reassigned sixth grade at Morningside to Mae Eanes Junior High School.) Petition filed by School Board to be allowed to Modify implementation of court's orders of July 13 and 30, 1970 to REDRAW ZONE BOUNDARY LINES BETWEEN THE MERTZ ZONE AND THE MORNINGSIDE ZONE to provide for reassignment of students in Belvedere Park and Gulf Terra areas. Petition filed by School Board to be allowed to modify implementation of court's orders of July 13 and 30, 1970 to BE ALLOWED TO ASSIGN STUDENTS IN GRADES 7-9 LIVING IN MERTZ ELEMENTARY ZONE, to MAE EANES JUNIOR HIGH SCHOOL. (Court orders assigned students in grades 7-9 to Washington Junior High School.) Petition filed by School Board to be allowed to modify implementation of court's orders of July 13 and 30, 1970 to CONTINUE OPERATION OF THE SIXTH GRADE AT THE MERTZ SCHOOL. (Court order eliminated the sixth grade at Mertz School and reassigned sixth grade in the Mertz Zone to Washington Junior High School.) Petition filed by School Board requesting the court to reopen Arlington School to serve grades 1-5 for the 1970-71 school yr,	

Docket Entries

District Court Order of April 25, 1963

Oral motion of the plaintiffs that Charles E. McNeil be substituted as President of the Board of School Commissioners of Mobile County in place of William B. Crane, who was named as Chairman of the Board, is hereby granted.

Oral motion of plaintiff to amend affidavit of Mrs. Ola Mae Davis is granted and plaintiff is allowed one week within which to file said amendment.

Motion for preliminary injunction set for hearing this date, at 9:30 a.m., submitted on affidavits pursuant to the order of court of April 12, 1963, is taken under submission. The plaintiffs are allowed to and including May 24, 1963, within which to file brief in support thereof, and defendants are allowed to and including June 10, 1963, to file reply brief.

Done at Mobile, Alabama, this 25th day of April 1963.

DANIEL H. THOMAS
District Judge

Court of Appeals Opinion of May 24, 1963

Before TUTTLE, *Chief Judge,*
and RIVES and BELL, *Circuit Judges.*

PER CURIAM.

This case is here on a petition for an order directing Honorable Daniel H. Thomas, United States District Judge for the Southern District of Alabama, to amend an order entered April 25, 1963, to show a motion on behalf of appellants for an immediate order requiring the School Commissioners to submit a plan of desegregation within thirty days and that this motion was denied by the court, or in the alternative, for an order directing a prompt determination of the motion of appellants for a preliminary injunction, now under submission in the District Court.

Appellants have filed a notice of appeal. Their petition is in the nature of an appeal from the denial of the injunction sought on the premise that a failure to rule amounts to denial, and is therefore appealable, citing United States v. Lynd, 5 Cir., 1962, 301 F.2d 818. The petition is also in the nature of an application for writ of mandamus, but is deficient in this respect in that it was not brought against the District Judge, nor was he accorded an opportunity to answer.

We test the petition on the basis of whether there has been an abuse of discretion on the part of the District Judge. The assertion is that there was an abuse because briefs were requested, and time allowed for the filing thereof, by the court at the time of taking the motion under submission. Appellants contend that the court should have ruled forthwith in view of the undisputed fact that the public schools in Mobile are segregated according to race.

We hold that there was no abuse of discretion, but with this caveat. The matter of the grant or denial of the motion for preliminary injunction, should, as in every case, be promptly determined. It is the duty of Judge Thomas to promptly rule on this motion for preliminary injunction.

It appears that the public schools of Mobile are in fact segregated according to race. This will not do under Brown v. Board of Education of Topeka, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873. This decision is binding on Judge Thomas. It is binding on all District Courts and all District Judges, just as it is binding on this court. The Supreme Court in the second Brown case, 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083, and in Cooper v. Aaron, 1958, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5, wisely left an area of discretion in the desegregation process to the District Courts, feeling that they were close to the local problems, and to school officials, and the children involved. However, the amount of time available for the transition from segregated to desegregated schools becomes more sharply limited with the passage of the years since the first and second Brown decisions. Thus it is that this court must require prompt and reasonable starts, even displacing the District Court discretion, where local control is not desired, or is abdicated by failure to promptly act.

The petition is denied and the appeal dismissed. The Clerk is directed to issue the mandate forthwith.

District Court Opinion of June 24, 1963

DANIEL HOLCOMBE THOMAS, *District Judge.*

This cause was submitted on plaintiffs' motion for a preliminary injunction, directing defendants to present for approval of the court, within a period to be determined by the court, a plan for the reorganization of the entire school system of Mobile County, Alabama, into a unitary nonracial system.

The motion purportedly sought relief in the alternative, but the first alternative prayed permanent relief "upon the conclusion of the trial" and hence did not seek interlocutory relief.

The complaint and motion in this case were filed on March 27, 1963. On April 25, plaintiffs urged the granting of the motion and suggested, in open court, without previous notice, thirty days as the period of time to be determined by the court in which defendants should be ordered to submit a plan for the reorganization of the Mobile County School system. The court took the motion under submission on that date, and directed the parties to file briefs within designated times. The court's action in this matter was appealed by plaintiffs, and the appeal was dismissed by the Court of Appeals by order dated May 24, 1963.

For the reasons stated below, the motion is denied as to the specific relief requested, requiring the presentation of a plan within thirty days. However, an interlocutory order will be entered which will assure the protection of the rights of the plaintiffs.

Based upon the affidavits filed by plaintiffs and respondents and on facts of which the court takes judicial notice, the court makes the following findings of fact.

District Court Opinion of June 24, 1963

FINDINGS OF FACT

1. The Mobile County School System is administered by the Board of School Commissioners of Mobile County, a five-man Board. The professional staff is under the direction of a County Superintendent of Education and his several Assistant Superintendents, each being in charge of a particular phase of Board activities.

2. During the school year 1962-63, there were 89 schools in the Mobile County School system, accommodating a pupil load of approximately 75,000 pupils. More than 2,370 teachers are employed in addition to 105 non-teaching school principals and assistants. More than 200 public school busses are operated by the Board in the transportation of school children in Mobile County.

3. The schools of Mobile County are, and have been since the end of World War II, seriously overcrowded. During this period, the pupil load has doubled. Forty-two percent of the increase in the number of pupils in the State of Alabama since 1940, has occurred in Mobile County. The average annual pupil increase has been 3,000.

4. As a result of the rapid growth of the school population, a building program sufficient to house properly the students fell five years behind. As a consequence, it was necessary to institute half-day or "double" sessions, the number of pupils in double sessions amounting to as many as 14,000 at one time.

5. In an effort to accommodate the pupil load, the School Board has engaged in an accelerated building program, and as a result the physical facilities are gradually overtaking the deficit. The administrative staff of the School Board has employed careful planning to utilize the space available, and throughout this period has resorted to the transportation of pupils from crowded schools nearer their homes to more distant schools where less crowded conditions existed. Many wooden portable classrooms have been constructed and utilized at the more crowded schools. As a result of these efforts, the number of pupils in double sessions has gradually decreased over the years.

6. Fourteen new schools, with more than three hundred rooms, are under construction or are about to be commenced, designed for occupancy in September of 1964. At that time, for the first time since World War II, it is probable that no student within the system will be in double-session classes. However, double sessions must continue through the school year 1963-64.

7. In normal years, in the Mobile County School System, the planning for a school term commences in March before the term beginning in September. The Board of School Commissioners of Mobile County followed the stated practice, and the planning for the session 1963-64 began in March of 1963.

8. Planning by the School Board staff consists of an ascertainment of pupil load based upon careful estimates and formulae derived from the experience of past years.

The gross pupil load for each school is then broken down into class-by-class figures which are furnished to the Assistant Superintendents. Based upon these figures, classes are organized and pupils assigned thereto; the curriculum is established for each school; necessary supplies are determined and ordered; class-room teachers are assigned, involving in many cases individual transfers; and school busses are allocated and routed.

9. The registration of the first-grade pupils for the term 1963-64 was accomplished before the end of the last preceding school term. Each registrant was placed in a class, and teacher assignments made.

10. Substantially all of the planning for the 1963-64 school session has already taken place, and most of the necessary administrative details have been accomplished. Teachers and the administrative personnel of the various schools have largely departed the area for additional professional schooling, or are on vacation, or in other summer employment.

11. Any major re-allocation of pupils, as would be required in a general desegregation process, would require the abandonment of planning already accomplished and the evolving of new plans. Such planning would be more difficult of accomplishment than a normal plan in that the administrative personnel would be without knowledge of pupil distribution, and the formulae evolved in normal years would be inappropriate. Many administrative details already accomplished would require cancellation. It would be necessary that administrative and teaching personnel be

available for consultation and study of the problems peculiar to each of the schools involved. Many of these personnel are unavailable.

12. Teaching personnel would have to be re-assigned in many instances. In the realm of teacher assignment and transfer, many human difficulties exist. Consideration of community needs must be co-ordinated with consideration of individual teacher qualifications and personality. It would be necessary to ascertain the qualifications of each teacher to be assigned to desegregated schools.

13. By reason of limited physical facilities, personnel problems, and administrative commitments, it is not now, nor has it been since the hearing of the motion, reasonably possible to reorganize the school system of Mobile County within such time as to affect the school year 1963-64.

14. The applications by the individual student plaintiffs for transfer to Baker High School during January 1963, were denied for valid administrative reasons.

OPINION

Under the circumstances disclosed by the findings of fact, it is clear that the motion for interlocutory relief cannot be granted as a practical matter, independent of other considerations. The radical revision of school attendance areas and other far-reaching administrative changes in the city-county school system contemplated by the motion, simply cannot be managed within the time available. It is very doubtful that it could have been managed within a period

of four to six months, even if all teachers and other administrative personnel were available for the entire time, which they are not. It is certain that no such order could now be made effective in the absence of every element which would be essential to its success—time, people, and, in all probability, money.

No plan or basis for general rearrangement of an entire local school system should be required by this or any court without affording to both the school authorities and the public ample time for consideration and discussion of alternatives. The arbitrary, hasty, and premature imposition of a plan would defeat the intended purpose and would create confusion, and impair the educational process for all pupils.

That it is impossible to predict what specific plan would be required upon the final outcome of this case, is made plain by the decision of Judge Lynne for the Northern District of Alabama in Armstrong v. Birmingham Board of Education, 220 F.Supp. 217. That decision was filed on May 28, 1963, after the submission of this motion. It holds, following the decision upholding the validity of the Alabama school placement and related laws by the Supreme Court of the United States in Shuttlesworth v. Birmingham Board of Education, 358 U.S. 101, 79 S.Ct. 221, 3 L.Ed.2d 145 (1958), that the principle of the Brown case can be fairly and adequately applied by the school authorities through the processing of applications pursuant to the State laws, and that any denial of constitutional rights in the handling of such applications can be corrected by the District Court on motion or by other proper proceeding.

Although the Armstrong decision would not necessarily be controlling here after final hearing, it does furnish a sound and appropriate basis for rejecting the notion that the sweeping reorganization proposed by the motion is now necessary for plaintiffs' protection.

The Fifth Circuit Court of Appeals, 318 F.2d 63, in its *per curiam* opinion in this case, handed down on May 24, 1963, had this to say: "The Supreme Court in the second Brown case [Brown v. Board of Education of Topeka], 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083, and in Cooper v. Aaron, 1958, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5, wisely left an area of discretion in the desegregation process in the District Courts, feeling that they were close to the local problems, and to school officials, and the children involved."

In line with this, I feel compelled to state here that this court ordered the desegregation of the municipal golf course in Mobile on the 13th day of March 1961. That case had been held under advisement for fourteen months. The opinion was written long prior to its release. The time of release was chosen by the court as being opportune, and evidently it was. There has been no incident on the golf course since its integration.

This court took under submission on July 25, 1961, motions to dismiss in the desegregation case involving the facilities of the Mobile Municipal Airport. On October 3, 1961, the motions were denied. The case is still pending, but will be dismissed as moot. The Airport facilities have long since been integrated. The court, close to the community and its problems, believed that this would come about voluntarily and without the necessity of judicial en-

forcement. Relying upon this belief proved providential. There has not been the first incident.

There is now pending in this court a case for the desegregation of the City Bus Lines for the City of Mobile. The City Bus Lines have long since been integrated. There have been no incidents, though the court has never ruled on this case. This case, at the appropriate time, will also very likely be dismissed as moot, though there is one city ordinance which must either be repealed or be stricken down by the court.

The libraries in the City of Mobile have long since been integrated, though no case was ever filed for their integration. Many drugstore lunch counters in Mobile are integrated, and many chain-store lunch counters have been integrated, though no suits have been filed.

Mobile is perhaps the most desegregated city in the South, with no unfortunate incidents. If and when the appellate courts are called upon to pass on the procedure which the District Court here outlines, is it too much to ask that they be mindful of that "area of discretion in the desegregation process to the District Courts," left by the Supreme Court in the second Brown case, and approved as wise by the Court of Appeals for this Circuit in the instant case? If so, this court has every reason to believe that the mandate of the court will be honestly, conscientiously, and fairly carried out with the least possible, if not complete absence of, unfortunate incidents.

The specific relief prayed for in the motion will be denied. The case will be set for trial on the 14th day of November 1963. Consideration of the motion to dismiss,

filed by the defendants, will be reserved until the trial of the cause. Defendants will be granted twenty days from the date of this order to file an answer.

In addition to any other relevant evidence which defendants may choose to offer, they will be directed to prepare and present at the trial a specific plan for the operation of the schools of Mobile County on a racially non-discriminatory basis, consistent with the principles established by the Supreme Court, to commence at the beginning of the 1964-65 school year.

Entered this the 24th day of June 1963.

Court of Appeals Opinion of July 9, 1963

Before BROWN, WISDOM and BELL, Circuit Judges.

PER CURIAM.

Plaintiffs here seek an injunction by this Court pending our determination of the merits of an appeal from an order entered on June 24, 1963, by the District Court for the Southern District of Alabama. This suit originated when Plaintiffs filed a class action seeking the desegregation of the Mobile County school system. Plaintiffs sought an immediate order requiring the Defendant School Commissioners to submit a plan of desegregation within thirty days. This motion was denied by the District Court. In the alternative, Plaintiffs sought a preliminary and permanent injunction prohibiting the further operation of segregated schools. The Court took this motion under submission and ordered briefs to be filed within a specified time. Plaintiffs appealed from this ruling asserting that the failure to immediately rule on the motion for preliminary injunction amounted to a denial of the motion. On that appeal, this Court held that the trial Judge had not abused his discretion. Davis v. Board of School Commissioners of Mobile County, 5 Cir., 1963, 318 F.2d 63.

Subsequently, the District Court held a hearing and made the following determination. By its order of June 24, the Court denied Plaintiffs' motion for preliminary injunction. The case was set for trial on November 14, 1963 and the Defendants were directed "to present at the trial * * * a specific plan for the operation of the schools under their authority and control on a racially non-discriminatory basis, consistent with the principles established by the Su-

preme Court, to commence not later than the beginning of the 1964-65 school year." It is from this order that Plaintiffs have appealed to this Court, seeking in the meantime an injunction requiring the Mobile County schools to commence integration not later than September 1963.

We are in agreement with Plaintiff's theory. The Defendant Board has not come forward with an acceptable reason why the integration program should be further delayed. No one disputes that the public schools of Mobile County are presently operated on a segregated basis.

> "It is now more than nine years since this Court held in the first Brown decision * * * 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, that racial segregation in state public schools violates the Equal Protection Clause of the Fourteenth Amendment.
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> * * * * *
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> "Given the extended time which has elapsed, it is far from clear that the mandate of the second Brown decision [349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083] requiring that desegregation proceed with 'all deliberate speed' would today be fully satisfied by types of plans or programs for desegregation of public educational facilities which eight years ago might have been deemed sufficient. Brown never contemplated that the concept of 'deliberate speed' would countenance indefinite delay in elimination of racial barriers in schools * * *." Watson v. City of Memphis, 1963, 373 U.S. 526, 83 S. Ct. 1314, 10 L. Ed.2d 529.
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> "Now * * * eight years after [the second Brown decision] was rendered and over nine years after the first

> Brown decision, the context in which we must interpret and apply this language ['all deliberate speed'] to plans for desegregation has been significantly altered." Goss v. Board of Education of City of Knoxville, 1963, 373 U.S. 683, 83 S. Ct. 1405, 10 L. Ed.2d 632.

The District Judge in his memorandum opinion discusses two principal reasons why preliminary injunctive relief should not now be granted. The first is that there would be an impossible administrative burden placed on the school system. The second is the Court's belief, based upon experience over the past several years in other race civil rights matters, that if this action is not too hastily taken, the problem will work itself out with no strife or similar consequences.

For reasons which bear on both of them, we think neither of these grounds is sufficient. The administrative problem is not one created by the Plaintiffs. They have for nearly a year sought without success to get the school authorities to desegregate the schools. The fact that the suit was not filed until March 1963 is not therefore of controlling importance. As to the second ground, there is nothing on the present record to afford either the District Judge or this Court any assurance that the requested forebearance will produce effective results. The Defendants have not even answered as yet. They have filed a motion to dismiss for failure to state a claim. Although it seems to be acknowledged on all hands that a racially segregated system is still maintained, the Defendants' legal position under this motion is that the Plaintiffs have not set forth a claim entitling them to relief. So far as this record shows, the Defendant

school authorities have not to this day ever acknowledged that (a) the present system is constitutionally invalid or (b) that there is any obligation on their part to make any changes at any time. At this late date the Plaintiffs, who represent Negro children who are presently being denied constitutional rights, are entitled to minimum effective relief. With the trial date now fixed in November, it means that effective relief is denied for another school year with no assurance that even at such later date anything but a reaffirmation of the teaching of the Brown decision will be forthcoming. The Plaintiffs showed a clear case entitling them to interim relief pending a final hearing, and it was an abuse of the District Court's discretion not to enter a preliminary injunction.

The "All Writs" statute, 28 U.S.C.A. § 1651, gives us the power to grant the relief sought by Plaintiffs. Stell v. Savannah-Chatham County Board of Education, 5 Cir., 1963, 318 F.2d 425. However, as in that case, we think it more appropriate to frame the injunction and direct by mandate that this injunction be made the order of the District Court.

It is therefore, ORDERED that the District Court for the Southern District of Alabama enter the following judgment and order:

> "The Defendant, Board of School Commissioners of Mobile County and the other individual Defendants (naming them specifically) and their agents, servants, employees, successors in office and those in concert with them who shall receive notice of this order, be and they are hereby restrained and enjoined from requiring and permitting segregation of the races in any school un-

der their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed, as required by the Supreme Court in Brown v. Board of Education of Topeka, 1955, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083.

"It is further ordered, adjudged and decreed that said persons be and they are hereby required to make an immediate start in the desegregation of the school of Mobile County, and that a plan be submitted to the District Court by August 1, 1963, which shall include a statement that the maintenance of separate schools for the Negro and white children of Mobile County shall be completely ended with respect to the first grade during the school year commencing September 1963, and with respect to at least one successively higher additional grade each school year thereafter."

The District Court may modify this order to defer desegregation of rural schools in Mobile County until September 1964, should the District Court after further hearing conclude that special planning of administrative problems for rural schools in the county make it impracticable for such schools to start desegregation in September 1963.

This order shall remain in effect until the final determination of the appeal of the within case in the Court of Appeals for the Fifth Circuit on the merits, and until the further order of this Court. During the pendency of this order the trial court is further directed to enter such other and further orders as may be appropriate or necessary in carrying out the expressed terms of this order.

The Clerk is directed to issue the mandate forthwith.

Court of Appeals Opinion of July 9, 1963

BELL, Circuit Judge (dissenting).

I dissent. I would support the view of the District Judge that the time remaining before the opening of school in September is insufficient to make the change from a segregated to a desegregated school system as requested.

The chance of disruption of the educational process in Mobile likely to be encountered in planning and effecting the necessary changes on such short notice outweighs the damage which may be incurred by Plaintiffs in waiting another year. Thus, I would not hold that the District Judge abused his discretion. The loss of the year can be made up by requiring that two grades be desegregated beginning in 1964. I would join in the order if it encompassed this change.

Time for the effectuation of orderly school management procedures is essential, and we should be careful not to give rise to an untoward situation in school administration at this late hour. Registration for the upcoming term has been completed, and school officials and staffs are in the vacation season. This is particularly so where we are passing on a motion in a case not filed until March, 1963.

ON PETITION FOR REHEARING

PER CURIAM.

This matter is before the Court on the petitioners' application for a rehearing.

July 9, 1963, this Court by mandate directed the District Court to enter an injunction and order requiring the Board

of Commissioners of Mobile County to submit to the District Court by August 1, 1963, a step-ladder plan for desegregating the public schools in Mobile, starting with the first grade in September 1963. Three days later, another panel of the Court decided Armstrong v. Board of Education of the City of Birmingham, No. 20595, 5 Cir., 323 F.2d 333. In that case the Court declined to issue an injunction pending appeal which would go so far as to provide "when and how the complete desegregation of the public schools may be accomplished." The Court's mandate requires the Birmingham School Board to submit by August 19, 1963, a plan for an immediate start in desegregation by applying the Alabama Pupil Placement Law to all school grades.

At this initial stage in the travail of desegregating the public schools in Alabama, the School Boards of Mobile and Birmingham face substantially the same social, legal, and administrative difficulties. We express no opinion of the merits of uniformity in school desegregation as against a school board's tailoring a plan and a trial judge's shaping a decree, to fit a particular school system. But we have reached the conclusion that at this early point in the legal proceedings, at a time when no school board in Alabama has formulated any plan for desegregation, there should not be one law for Birmingham and another for Mobile. We have decided therefore to conform the Mobile order to the Birmingham order.

Accordingly, the Court amends the judgment and order of July 9, 1963, issued as the mandate, by deleting the following paragraph:

"It is further ordered, adjudged and decreed that said persons be and they are hereby required to make an immediate start in the desegregation of the school of Mobile County, and that a plan be submitted to the District Court by August 1, 1963, which shall include a statement that the maintenance of separate schools for the Negro and white children of Mobile County shall be completely ended with respect to the first grade during the school year commencing September 1963, and with respect to at least one successively higher additional grade each school year thereafter."

and, in lieu thereof, directs the District Court for the Southern District of Alabama to enter the following paragraph as its judgment and order:

"It is further ordered, adjudged and decreed that said persons be and they are hereby required to submit to this Court not later than August 19, 1963, a plan under which the said defendants propose to make an immediate start in the desegregation of the schools of Mobile County, Alabama, which plan shall effectively provide for the carrying into effect not later than the beginning of the school year commencing September 1963 and thereafter of the Alabama Pupil Placement Law as to all school grades without racial discrimination, including 'the admission of new pupils entering the first grade, or coming into the County for the first time, on a nonracial basis,' Augustus v. Board of Public Instruction, 5 Cir., 1962, 306 F.2d 862, 869 (that opinion describes such a plan which has been approved and is operating in Pensacola, Florida)."

As in the Birmingham decision, the order contemplates a full hearing before the District Court. The District Court will therefore go forward with the trial already fixed for November 14, 1963.

Except to the extent expressly granted herein, the petitioners' application for a rehearing is denied.

The Clerk is directed to issue the mandate, as amended, forthwith.

BELL, Circuit Judge (concurring in part and dissenting in part).

The modification by the majority of their prior order in this case compounds error. Of course, I agree to the modification to the extent that it may alleviate disruption of the educational process in Mobile during the 1963-1964 school term.

My understanding of this latest order is not altogether clear. It appears to simply require activation, under some plan yet to be worked out, of the Alabama School Placement Law which was adopted by the Legislature of that State in 1957, and which was approved as constitutional on its face in Shuttlesworth v. Birmingham Board of Education, N. D. Ala., 1958, 162 F. Supp. 372, affirmed 358 U.S. 101, 79 S. Ct. 221, 3 L. Ed.2d 145. It is not likely that any appreciable amount of desegregation will take place under that law at this late date. The protective measures assured by Judge Lynne in the Armstrong case of a hearing on complaints if and where the plan or law is administered on the basis of race on five days notice is not present in Mobile. It is an inherently complicated law providing many factors which may be considered in making pupil assignments. We

have only recently eliminated two of them in the Atlanta school case where we said that the use of scholastic standards and personality interviews as a basis in transfer and assignment were illegal per se which applied only to Negroes. Calhoun v. Latimer, 5 Cir., 1963, 321 F.2d 302. Others were eliminated or limited when that case was in the District Court. Calhoun v. Board of Education, N. D. Ga., 188 F. Supp. 401. Working out a meaningful plan will not be easy, and will require more than the cursory and perfunctory treatment the case has received here.

Moreover, what was done in Birmingham may or may not be relevant to Mobile. The case there had been pending in the District Court some three years. The District Court conducted a hearing and had certain representatives from the school board as to how the Pupil Placement Law would be administered. Here no party has ever mentioned using this law. The District Court has never considered it.

This case is set for trial on the merits in November. A pending motion to dismiss is set at the same time. The District Court has ordered the school board to propose at that time a plan for desegregation of the school system beginning in September 1964 within the teachings of the Supreme Court decisions on that subject.

It has been the position of appellants that their ultimate right to a desegregated school system is cast in doubt by the pending motion to dismiss, and the fact that the case is set for trial on the merits even though the school system is now segregated. One of the real thrusts of the appeal is their contention that they cannot be certain that desegregation will become a reality in the school term commencing in September 1964 because of this posture of the case. An

order of the type originally entered but making desegregation effective with the beginning of school in September 1964, and in at least two grades, should serve to dispel this doubt and the record warrants such an order. In warrants nothing more. The school board would have the opportunity in the interim of formulating a desegregation plan, subject to court approval, and making ready for the good faith adaptation of the plan.

The modification has been neither sought nor considered and will come as a great surprise to all. It will in all probability be ineffective. I do not understand the inordinate hurry in this case. It has only been pending three and one half months. It has been to this court twice in that short time.

Probably no party will consider the relief granted or denied to be a victory, but what has been done is at the expense of the judicial process. A Court of Appeals should not sit as a District Court in chancery to mold and enter an equitable decree affecting an entire school system in a metropolitan community without hearing from the parties on the nature of the decree, and without facts before it to serve as a basis for the decree. The All-Writs Statute, 28 U.S.C.A., § 1651, does not authorize this. It must contemplate rules of procedure, notice, record facts, and an opportunity to be heard, all after time for consideration by the District Court. It applies only in cases of emergency proportions. To state this belief is to at once demonstrate that I cannot join in the procedure here. Therefore, I must dissent, except as otherwise stated, with the admonition that more constitutional rights will be lost than gained in the long run by departure from procedures which have

stood the test of time, and which are a part of due process of law as we have heretofore known it. In fact, more may be eventually lost in this very case.

While this appeal must have been considered as presenting something in the nature of a judicial emergency in the beginning; otherwise it would not have been twice advanced over the many other cases pending in this court, it is plain to me that it now has no emergency proportions. I would remand it to the District Court for action on the basis of reasoned and informed discretion in the light of necessary facts and argument, consistent with the law in the premises and the guidelines which I have set out regarding September 1964.

CAMERON, Circuit Judge (dissenting).

On July 11, 1963, I requested a hearing of this case en banc by writing all of the Judges of the Court in active service as follows:

> "Pursuant to Rule 25(a) of this Court, I hereby initiate consideration by each of the Circuit Judges in active service of whether to order a hearing or rehearing of this case en banc. Included in this motion is the request that the issuance of the mandate be stayed until the attitude of the members of the Court can be ascertained and that the Chief Judge proceed to poll the Court on this motion. • • •
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> "I am of the opinion • • • that the case was not legally advanced for hearing or placed on the docket for hearing at the time it was heard, it being my understanding that the order was signed by Judge Tuttle on

June 28th after the judgment of the district court had been entered June 24th.

"I think, too, that there is considerable doubt about the jurisdiction of this panel to hear the case. It is my understanding that this panel had under consideration before we adjourned for the summer the Theron Lynd case * * * Its right to consider and adjudicate the Davis case is, I think, subject to serious question.

"I assume that the record before the Court in New Orleans was sent up under our Rule 23(4), which is a substantial rescript of Rule 75(j), Federal Rules of Civil Procedure. That portion of our Rules refers only to a motion 'for any intermediate order.' I do not think the order which this Court directed the district court to enter can be classified as an intermediate order. It seems to me it is the equivalent of a final judgment granting all of the relief which the plaintiffs-appellants would be entitled to under a hearing on the merits and, in fact, dispenses with a hearing on the merits.

"For these reasons and others, including the fact that I see from the press that the appellees have made or intend to make a motion for a hearing en banc, I respectfully make this request."

The panel of Judges BROWN, WISDOM and BELL filed two per curiam opinions, one dated July 9, 1963 in which Judge BELL dissented, and the second filed July 18, 1963 in which Judge BELL concurred in part and dissented in part.

Being advised that a majority of the members of this Court in active service did not support my request for en banc hearing, I respectfully dissent from the action of the

members of the Court in refusing to grant an en banc hearing. The principles discussed in my dissenting opinion in No. 20595, Armstrong et al. v. Board of Education of the City of Birmingham, et al., 5 Cir., 323 F.2d 333, are in my judgment controlling in this case also and I adopt that opinion as a part of this one.

The panel to which this case was assigned by the Chief Judge on July 1, 1963[1] was a panel designated for a former term of this Court. Assuming that it was empowered to act, during the intervening time, on a case which it had under consideration when the term ended, it would not, in my opinion, have jurisdiction to hear the present case under special designation by the Chief Judge acting alone. As stated in the Armstrong case, it seems to me clear from the statutes and the Supreme Court decisions cited there and the Rules of this Court, that the assignment of Judges and of cases for hearing is a matter entrusted solely to the Court as a body.

To hold that one Judge is vested with authority to fix the time and place where a case is to be heard, and to select the Judges who shall hear it, is, in my judgment, to decide that one man has power in excess of any which has been committed to any individual under this government of laws.

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[1] "The within motion for an injunction pending appeal is hereby set for hearing before a panel of this Court to be convened in New Orleans, Louisiana, July 8, 1963, to follow immediately after the hearing in the case of United States v. Lynd, 5 Cir., 321 F.2d 26.

"This 28th day of June, 1963.

"Elbert P. Tuttle
"Chief Judge
"Fifth Circuit"

It is clear, moreover, that there is no showing here that the case is exceptional or extreme or which demonstrates a clear abuse of discretion or usurpation of judicial power such as the panel of this Court thought it discovered in Stell et al. v. Savannah-Chatham County Board of Education et al., May 24, 1963, 318 F.2d 425.

I respectfully dissent.

District Court Order of July 26, 1963

In keeping with the mandate of the United States Court of Appeals for the Fifth Circuit, issued July 18, 1963, amending its judgment and order of July 9, 1963, it is

ORDERED, ADJUDGED AND DECREED by this court that the judgment and order of this court entered July 11, 1963, be and it hereby is amended by deleting the following paragraph:

> "It is further ordered, adjudged and decreed that said persons be and they are hereby required to make an immediate start in the desegregation of the school of Mobile County, and that a plan be submitted to the District Court by August 1, 1963, which shall include a statement that the maintenance of separate schools for the Negro and white children of Mobile County shall be completely ended with respect to the first grade during the school year commencing September 1963, and with respect to at least one successively higher additional grade each school year thereafter."

and in lieu thereof the following paragraph is entered as the judgment and order of this court:

"It is further ordered, adjudged and decreed that said persons be and they are hereby required to submit to this Court not later than August 19, 1963, a plan under which the said defendants propose to make an immediate start in the desegregation of the schools of Mobile County, Alabama, which plan shall effectively provide for the carrying into effect not later than the beginning of the school year

commencing September 1963 and thereafter of the Alabama Pupil Placement Law as to all school grades without racial discrimination, including 'the admission of new pupils entering the first grade, or coming into the County for the first time, on a nonracial basis,' *Augustus* v. *Board of Public Instruction*, 5 Cir. 1962, 306 F.2d 862, 869 (that opinion describes such a plan which has been approved and is operating in Pensacola, Florida)."

Dated this the 26th day of July 1963.

/s/ DANIEL H. THOMAS
District Judge

Opinion of Mr. Justice Black, 8/16/63, Denying Stay

MR. JUSTICE BLACK.

I am asked to stay an order of the United States Court of Appeals for the Fifth Circuit requiring the Board of School Commissioners of Mobile County, Alabama, to take action in two respects: *First:* To refrain "from requiring and permitting segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed, as required by the Supreme Court in Brown v. Board of Education of Topeka, 1955, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083."

Second: To submit to the District Court "not later than August 19, 1963, a plan under which the said defendants propose to make an immediate start in the desegregation of the schools of Mobile County, Alabama, . . . not later than the beginning of the school year commencing September 1963 . . . ."

Although a judge of the panel which entered this order refused to grant a stay, I would nevertheless stay the order if persuaded by the record that the questions presented for review in the petition for certiorari had sufficient merit to make review by this Court likely. I do not believe that the questions have such merit.

First. Under the facts in the record, the Court of Appeals' order that the Board refrain from "requiring and permitting segregation" is completely justified by our holding in Brown v. Board of Education, 347 U.S. 483, 98 L. Ed.

873, 74 S. Ct. 686, 38 ALR 2d 1180, and 349 U.S. 294, 99 L. Ed. 1083, 75 S. Ct. 753. And see Cooper v. Aaron, 358 U.S. 1, 3 L. Ed. 2d 5, 78 S. Ct. 1401. The injunction was carefully limited to allow "such time as may be necessary to make arrangements for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed . . . ." This injunction was necessary because the record showed without dispute that racial segregation was and had been the unbroken practice in the Mobile schools and that the Board had no plans to do away with that practice in the foreseeable future. Under such circumstances our prior decisions plainly impose upon courts a duty to protect against such unlawful discrimination.

Second. The Board also challenges the requirement that it submit, not later than August 19, 1963, a plan for "an immediate start in the desegregation of the schools of Mobile County" not later than the beginning of the September 1963 school year. In adopting this part of its order, the Court of Appeals rejected the District Court's decree, which allowed the Board to postpone action until after the 1963 school term had begun. The Board argues that to require action for the 1963 school year gives it too little time and could disrupt the school system. But the first Brown decision was rendered in 1954—nine years ago. That case and others that followed have made it abundantly clear that racial segregation in public schools is unconstitutional. Yet this record fails to show that the Mobile Board has made a single move of any kind looking towards a constitutional public school system. Instead, the Board

in this case has rested on its insistence that continuation of the segregated system is in the best interests of the colored people and that desegregation would "seriously delay and possibly completely stop" the Board's building program, "particularly the improvement and completion of sufficient colored schools which are so urgently needed." In recent years, more than 50% of its building funds, the Board pointed out to the parents and guardians of its colored pupils, had been spent to "build and improve colored schools," and of eleven million dollars that would be spent in 1963, over seven million would be devoted to "colored schools." The record fails to indicate when, if ever, the Board intends to take a first step towards making its public school system conform to the constitutional guarantee of equal protection of the laws. Far from claiming that it intended to desegregate the schools, the Board asked complaining parents to believe that "it would be detrimental to 99% of the colored children in the public schools for any token integration to be attempted at this time."

It is quite apparent from these statements that Mobile County's program for the future of its public school system "lends itself to perpetuation of segregation," a consequence which the Court recently had occasion to condemn as unlawful. Goss v. Board of Education, 373 U.S. 683, 686, 10 L. Ed. 2d 632, 635, 83 S. Ct. 1405. And while the second Brown decision said that elimination of racial segregation in public schools should proceed "with all deliberate speed" that term was not intended, as the Court recently emphasized in Watson v. Memphis, 373 U.S. 526, 10 L. Ed. 2d 529, 83 S. Ct. 1314, to excuse an indefinite withholding of constitutional rights. Indeed, in the very Brown Case which

used the term "deliberate speed," the Court also unanimously declared that "While giving weight to . . . public and private considerations, the courts will require that the defendants make a broad and reasonable start toward full compliance with our May 17, 1954, ruling." 349 U.S. at 300. It is difficult to conceive of any administrative problems which could justify the Board in failing in 1963 to make a start towards ending the racial discrimination in the public schools which is forbidden by the Equal Protection Clause of the Fourteenth Amendment, as authoritatively determined by this Court in Brown nine years ago. Compare Watson v. Memphis, supra (373 U.S. at 529, 530); Goss v. Board of Education, supra (373 U.S. at 689).

I cannot believe that this Court would seriously consider upsetting the Court of Appeals' order. The stay is denied.

District Court Order of August 23, 1963

This cause coming on to be considered by the Court pursuant to notice, with counsel for the respective parties being present and heard, on a proposed plan as heretofore filed by the Board of School Commissioners of Mobile County, Alabama, and objections to particulars thereto filed by plaintiffs, it is, upon consideration, hereby

ORDERED:

1. The proposed plan as submitted by the Board of School Commissioners of Mobile County, Alabama, and filed herein on August 19, 1963, pursuant to previous order of this Court, be and it hereby is approved with the following amendments and modifications:

(1) The so-called "cut-off date" for the 1963-64 school term, referred to in paragraph (5) of the Plan and at other places therein, shall be changed from July 31, 1963, to on or before August 28, 1963, for 12th grade pupils.

(2) The defendants, prior to the beginning of the 1963-64 term of school on September 4, 1963, shall process all applications for transfer heretofore received, and all such applications for transfer of 12th grade pupils that may be received not later than said extended date, August 28, 1963.

This Court retains jurisdiction for the purpose of making and entering such further orders as may be necessary to accomplish the essential purposes of the Plan as herein modified and approved.

DONE AND ORDERED at Mobile, Alabama, this the 23rd day of August 1963.

DANIEL F. THOMAS
District Judge

Court of Appeals Opinion of June 18, 1964

Before MARIS,* GEWIN and BELL, *Circuit Judges.*

GEWIN, *Circuit Judge.*

This appeal presents for our review litigation with respect to the desegregation of the public school system of Mobile County, Alabama. The case has received the attention of this Court on two former occasions. The first time it arose on a petition in the nature of an appeal from an alleged denial of injunctive relief, which petition was grounded on the premise that the failure of the District Court to rule promptly constituted a denial of relief and was therefore an appealable order. In addition the petitioners sought relief in the nature of an application for writ of mandamus directed to the District Judge. The petition was denied and the appeal dismissed. Davis v. Bd. of School Commissioners of Mobile County, Alabama (5th Cir. 1963) 318 F.2d 63.

After hearing in the District Court, an appeal was taken, and the cause was advanced on our docket pursuant to a motion for an injunction pending appeal. This Court granted the injunction pending appeal on July 9, 1963, and on petition for rehearing amended its order on July 18, 1963. Davis v. Bd. of School Commissioners of Mobile County, Alabama (5th Cir. 1963) 322 F.2d 356, cert. den. 375 U.S. 894, 84 S.Ct. 170, 11 L.Ed.2d 123. We now consider the appeal on the merits.

In its original order dated June 24, 1963, the District Court denied injunctive relief against the Board of School Commissioners as sought by the plaintiffs (appellants).

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* Of the Third Circuit, sitting by designation.

Davis v. Board of School Commissioners of Mobile County, Alabama (D.C.S.D.Ala. 1963) 219 F.Supp. 542. Following our decision, supra, the District Court entered its order dated July 11, 1963, amended July 26, 1963, pursuant to the mandate of this Court. Thereafter the School Board presented a plan to the District Court for its consideration. After a hearing on objections resulting in some modifications, the District Court approved the plan and the plaintiffs appealed. The plan operated during the school session commencing in September, 1963, but was limited to the 12th grade, and it was not applied to rural schools.

We deem it unnecessary to set forth the details of the proposed plan except to say that it was based essentially upon the Alabama Pupil Placement Law. While somewhat more detailed and precise, the *Mobile* plan was similar in many essential respects to the plan proposed in *Birmingham*, Armstrong v. Bd. of Education of the City of Birmingham, Alabama (5th Cir. 1964) 333 F.2d 47, the opinion in which has been rendered simultaneously with this opinion. It should be noted that the mandates of this Court in *Mobile* and in *Birmingham*, when we granted an injunction pending appeal, are essentially identical, except that in *Mobile* the District Court was authorized to defer desegregation of rural schools in Mobile County until September, 1964.[1] There are other differences in the two cases.

[1] "The District Court may modify this order to defer desegregation of rural schools in Mobile County until September 1964, should the District Court after further hearing conclude that special planning of administrative problems for rural schools in the county make it impracticable for such schools to start desegregation in September 1963." Davis v. Board of School Com'rs of Mobile County, Ala. (5th Cir. 1963) 322 F.2d 356.

For example, in *Mobile* the Board of School Commissioners operates the entire school system for Mobile County and there is one Superintendent of Schools for the entire county. Differences which do exist are not material to our consideration here.

As mentioned above, we have rendered our opinion on the merits of the *Birmingham* case simultaneously with this opinion. Our decision in *Birmingham* is controlling here, and we consider it unnecessary to repeat now what was there said, except to point out some of the more salient factors with respect to minimum requirements in school desegregation cases of this type. We emphasize here as we did in *Birmingham*, that plans for desegregation must now proceed at a swifter pace in view of the ten-year period which has elapsed since the first *Brown* decision;[2] the responsibility and duty resting on school boards to provide a constitutional plan of desegregation; the necessity for the constitutional administration of the Alabama Pupil Placement Law without regard to race or color; the hearing of complaints by the District Court with respect to the denial of constitutional rights, thus avoiding cumbersome administrative procedure; timely notice of the plan to interested persons; the abolition of dual school zones, areas, or districts;[3] and the retention of jurisdiction by the District Court for further implementation and supervision.

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[2] Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). See also the implementing decision. Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955).

[3] As to such dual districts, school zones, or areas, the brief of the Board of School Commissioners states:

"By implication, at least, in reference to attendance at schools of the district of the residence of each of the pupils

Court of Appeals Opinion of June 18, 1964

Upon consideration of the evidence before us and giving consideration to the circumstances here involved, it is our conclusion that this cause be remanded to the District Court with instructions to require the Board of School Commissioners of Mobile County, Alabama, to present to the District Court forthwith for its consideration a plan of desegregation which will meet the minimum standards set forth and outlined in the *Birmingham* case.

The order of the District Court heretofore entered on June 24, 1963, denying injunctive relief is vacated; the orders of the District Court entered on July 11 and 26, 1963, pursuant to our mandate in this case, are continued until modified by the District Court; and the cause is remanded for the entry of appropriate orders not inconsistent herewith.

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when the plan has progressed to that particular grade, the system would be operating under a single-type district or attendance area arrangement. Again, without all of the testimony adduced in the trial of the cause on the merits, before this court presently, it is difficult to present the entire picture. At the time of the trial on the merits, the Superintendent testified that there were only a few dual zones within the system presently. He further testified that a major re-evaluation and re-draft of the school districts was in progress, or about to commence, which would eliminate even those few dual districts that existed. Consequently, the objection by appellants to this aspect of the plan is one of letter rather than substance."

District Court Orders of July 29, 1964 and July 31, 1964

THOMAS, District Judge.

It is hereby ordered that the Board of School Commissioners of Mobile County, and the members thereof, submit to this the United States District Court for the Southern District of Alabama by filing with the Clerk thereof, on or before July 17, 1964, a plan for desegregation in accordance with the directions and terms of the opinion and mandate of the United States Court of Appeals for the Fifth Circuit (in case No. 20657, Birdie Mae Davis, et al, Appellants vs. Board of School Commissioners of Mobile County, et al, Appellees) rendered and issued June 18, 1964.

It is further ordered that on or before the date of the filing thereof, a copy of said plan be served by defendants in the manner provided by the Federal Rules of Civil Procedure, by mail or otherwise, upon the attorneys for the plaintiffs in this action, and that any objections to said proposed plan which plaintiffs may desire to make, be filed and served upon the attorneys for the defendants on or before the 27th day of July, 1964. Hearing on such objections as may be filed will be heard before this Court in Mobile, Alabama, at 10:00 o'clock A.M., on July 29, 1964.

Ordered 29th day of June, 1964.

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District Court Orders of July 29, 1964 and July 31, 1964

AMENDMENT TO PLAN SUBMITTED BY THE BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, PURSUANT TO ORDER DATED JUNE 29, 1964

This Amendment to the Plan heretofore submitted under order of this Court dated July 11, 1963, as amended July 26, 1963, is submitted pursuant to the order of this court entered June 29, 1964. Said order requires the submission of a plan to conform to the opinion and mandate of the United States Court of Appeals for the Fifth Circuit, rendered and issued June 18, 1964.

The plan heretofore submitted is amended as follows:

1. By deleting Paragraph E. thereof and substituting in lieu thereof the following:

"E. Pupils entering the first grade for the school year 1964-65 were pre-registered near the end of last term and estimated enrollments for September, 1964, were developed last February as to all grades except the first, eleventh and twelfth; following pre-registration, the estimated enrollments were developed for the first grade; and, following the close of the April 1-15 transfer request period, for the 11th and 12th grades; building and classroom capacity have been adjusted thereto; school supplies, textbooks, and other materials and equipment have been allocated accordingly; schools have been staffed and teachers assigned on the same estimated enrollments; and"

2. By deleting Paragraph G. thereof and substituting in lieu thereof the following:

"G. The problems in connection with any desegregation of the schools outside the corporate limits of the City of Mobile are substantially different from the problems involved for desegregation within the City of Mobile including the assignment of the components of an intricate transportation system and it is not administratively feasible to expand this plan beyond the 11th and 12th grades for those schools outside the corporate limits of Mobile during the term 1964-65."

3. By deleting Paragraph (4) thereof and substituting in lieu thereof the following:

"(4) *Applicability of Plan:* This plan had application in the school year 1963-64 to the 12th grade, in the City of Mobile schools only. In the school year 1964-65 it shall have application to the 11th and 12th grades in all schools of Mobile County; and to the 1st and 10th grades in City of Mobile schools. In 1965-66 it shall have application to Grades 1, 2, 9, 10, 11 and 12 of all schools of Mobile County; in 1966-67 to grades above listed and in addition, to grades 3 and 8; in 1967-68 to grades above listed and in addition to grades 4 and 7; in 1968-69 to grades above listed and, in addition, to grade 6; and in 1969-70 to grades above listed and, in addition, to grade 6."

4. By deleting Paragraph (5) thereof and substituting in lieu thereof the following:

"(5) *Special Provisions for 1964-65:* The period of August 4 through 6 is hereby established wherein 1st and 10th grade pupils in the City of Mobile may request transfers from schools to which they are assigned for 1964-65 or at which they are pre-registered. The transfer provisions of this plan shall apply and race or color will not be considered in acting upon these applications. Notice of action taken by the Assistant Superintendent on such requests will be given on or before August 22nd. Such action shall be final unless a Board hearing is requested in writing to reach the offices of the Board on or before 5:00 P.M., August 28th. Public notice of this special transfer request period shall be given in a daily newspaper of general circulation in Mobile County, as a conscious reminder to parents and guardians."

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THOMAS, *District Judge.*

ORDER APPROVING PLAN AS MODIFIED

This cause coming on to be considered by the Court pursuant to notice, with counsel for the respective parties being present, on a proposed Plan as heretofore filed on July 21, 1964, by the Board of School Commissioners of Mobile County, Alabama, and objections to particulars thereto filed by plaintiffs, it is, upon consideration, hereby

ORDERED:

The proposed Plan as submitted by the Board of School Commissioners of Mobile County, Alabama, and filed herein on July 21, 1964, pursuant to the prior order

of this Court, be and it hereby is APPROVED with the following amendments and modifications:

(1) The period established in said Plan wherein first and tenth grade pupils in the City of Mobile may request transfers, as set out in Paragraph (5) thereof, shall be changed from August 4 through 6, to August 3 through 10. Tenth grade pupils outside the corporate limits of the City of Mobile may also request transfers during said period.

(2) The public notice of the special transfer request period as called for in Paragraph (5) of said Plan shall consist of the publication for three consecutive days, commencing Saturday, August 1, 1964, in a daily newspaper of general circulation in Mobile County, of a notice setting out the period wherein transfer requests may be made; the grades affected thereby; and the procedures for requesting such transfer.

(3) The application of said Plan for the school year 1964-65, as set out in Paragraph (4) thereof, shall be changed so that the Plan shall have application in school year 1964-65 to the 10th, 11th and 12th grades in all schools of Mobile County and to the first grade in City of Mobile schools.

This Court retains jurisdiction for the purpose of making and entering such further orders as may be necessary to accomplish the essential purposes of the Plan as herein modified and approved.

Done and entered at Mobile, Alabama, this the 31st day of July, 1964.

District Court Opinion of March 31, 1965

THOMAS, *District Judge.*

FINDINGS OF FACT

1. Reduced to its basic terms the desegregation plan under which the defendant Board is operating the schools is as follows:

a. Each elementary school has a single attendance area. Each Junior High School serves a combination of attendance areas. Each Senior High School serves a larger combination of elementary attendance areas.

b. It divides students, for administrative purposes, into 3 categories: (1) Those now attending a particular school, by race, because of their residence in what was formerly a dual zone; (2) those now in attendance at schools where dual racial zones have never been involved; and (3) those entering the school system for the first time (either as 1st graders, newcomers to the system in other grades, or those who have moved from one attendance area to another).

c. Students remain where enrolled unless a transfer is granted. Those in category (1) are granted transfers unless some compelling non-racial consideration dictates otherwise; those in category (2) are considered for transfer without regard to race but applying other proper factors alike to all.

d. Newcomers, 1st graders and persons moving to a different attendance area have the absolute right to enroll in the school of the attendance area of their resi-

dence or the option to enroll at the nearest school formerly serving their race.

e. The plan has application to grades 1, 2, 9, 10, 11 and 12 in the school year 1965-66; to two additional grades per year for the next two years; and to one additional grade per year for the last two years.

2. A fifteen day transfer request period is prescribed for April 1-15 of each year, and prospective first grade pupils are pre-registered later in April for the following year. The practice of designating a period for transfer requests prior to the school year wherein they will be effective and the practice of preregistering first graders are administrative procedures long followed by the defendant Board, their inception having been before the knowledge of the present Superintendent who entered upon his duties with the Board in 1948.

3. The defendant Board makes no initial assignments of individual pupils, but permits the free exercise of options provided without regard to present racial make-up of the school or to the race of the pupil.

Initial enrollment involves no transfer nor other special action of the Board. The exercise of the option is accomplished simply by the pupil presenting himself at the school he selects and enrolling. This is the case whether the student is entering the 1st grade, is a newcomer, or has moved from one district to another. It is also true regardless of the race of the pupil or the racial composition of the school.

4. The dual attendance areas based upon race have been abolished and a new single attendance area system estab-

lished. A map setting out the boundaries of the new attendance areas has been furnished the court, considered by it and forms a part of the record in this cause. The practice of granting transfers to those enrolled in a particular school because of the old dual attendance areas has overcome the discrimination existing because of these.

5. The newly adopted single attendance areas were not racially devised but arranged by giving due weight to proper factors, e.g., natural and nan-made barriers; safety factors, such as major thoroughfares; maximum use of facilities; transportation facilities and patterns, and other like considerations. The majority of these attendance areas have both races residing therein.

6. The neighborhood school organization is a longstanding practice in the administration of the school system in Mobile County. It is founded on a sound educational basis and the defendant Board is amply justified in its use.

7. The defendant Board has historically permitted parents some flexibility in selecting a school. A rigid system that requires all children of an area, without exception, to attend a particular school fails to take into account that school patrons and pupils are individuals with choices, likes and dislikes. Such rigidity is a major handicap to proper educational processes. However, such flexibility is limited by good administrative practices which require a reasonable amount of specificity to permit adequate planning.

8. There are more than 79,000 pupils in the Mobile County School System. There are 94 schools presently in

the system with 8 additional schools in planning or construction. Half-day sessions have been eliminated but 39,000 students are in overcrowded conditions. The schools in the system have not been designated by race since the adoption of the plan.

9. In the administration of its plan, there is no evidence of any discrimination by virtue of race. The evidence supports equal application of the policies and provisions of the plan to both races and the Court so finds as a matter of fact.

10. No special tests are administered to pupils of either race requesting transfer. No denial of transfer is based on any test result. No transfer has been denied arbitrarily or unevenly as between the races. Approximately 500 pupils filed requests for transfer for the school year 1964-65 and less than half were granted. None was denied on the basis of race. This is a normal proportion of denials based upon past years' experiences of the Board.

11. Sixteen Negro pupils requested transfers for the term 1964-65 to formerly white schools or schools with predominantly white student bodies. Seven were granted and nine denied. Each denial was based upon a non-discriminatory factor and transfer requests for many white pupils were denied on the same grounds.

12. The plan of the defendant Board contains criteria for use in the consideration of transfers, some of which have been discredited by the Courts. The Board did not use

any of such discredited criteria in the weighing of transfer applications for the year 1964-65. These criteria should be stricken from the plan.

13. This Court has retained jurisdiction of this cause for further proceedings and to hear any complaints or charges of discriminatory application of the defendant Board's plan. No complaint has been lodged or filed with this court by any individual as to any discriminatory actions of the Board in the administration of the plan.

14. Normally all pupils enrolled in a particular school do not commence attendance at the school for several days, even up to two to three weeks after school opens. The average daily attendance at any school in the Mobile County system from students already enrolled there will normally increase during the first month of school.

15. It is not practicable nor desirable for the Board to attempt to advise parents as to what school a child should apply for transfer to. Parental desire is a factor in granting transfers. Further it is not feasible for the defendant Board to act on transfer requests individually as received, since the effect of the total transfer requests must be appraised before any may fairly be granted. The defendant Board has, as a matter of practice over the years, deferred action on any request until all are received and the end of the transfer request period reached.

16. From 1,000 to 3,000 pupils change schools annually in the Mobile County school system because their parents

move from one attendance area to another. These changes are in addition to the normal transfers for other valid reasons. Those pupils so moving are permitted simply to report to the school of their attendance area or the optional school without the necessity of transfer.

17. The teachers and administrators of those schools where Negro pupils attend with a predominantly white student body have been fair and have treated the Negro students as any other pupil. While two of the student witnesses testified to minor harassment by some students, it is clear from their testimony that the teachers treated them in a normal relationship. Breach of good conduct by white pupils was promptly dealt with by administrative personnel when reported or observed.

18. It was the opinion of the student witnesses that the course of studies at Murphy High School was more difficult than their prior school, Williamson; that they were learning more and the facilities were better at Murphy. The Court accepts this as findings of fact. Facilities vary from school to school as do teaching quality and standards. The Court takes judicial knowledge that Murphy High School is the largest school in the Mobile system and one of the largest in the State of Alabama. A large number of schools in the Mobile County system are overcrowded and the defendant Board has been building new schools at a rapid rate. The actual physical plants in those schools attended predominantly by Negro pupils are essentially equivalent to those attended predominantly by white students; the teacher qualifications are the same; the salary schedules are the same; and the per capita expenditure is the same.

19. A larger variety of special courses is offered at those schools attended predominantly by white pupils, although in many instances the number of schools offering a particular course is only one more in the case of white pupils. There are about 50% more white pupils in the system than Negro pupils, making it reasonable that more schools attended predominantly by white pupils would offer a particular special subject. Many factors enter into a determination of courses offered in a particular school, and the course offerings vary from school to school without necessary regard to the race of the pupils. Facilities, pupil interest, location, and socio-economic factors all affect course offerings. There is no evidence that any application for transfer for the current year was predicated on a desire for a special course not offered by the school the pupil had been attending. The Assistant Superintendent in charge of pupil personnel could not recall a single such request.

20. The procedures for requesting a transfer have been administered without discrimination. It is required that a parent or guardian obtain the form from the School Board office. This is to prevent immature actions by pupils, who might abuse the transfer process. The requests must be signed by both parents, if reasonably possible; or when not practicable to do so, such circumstance must be noted. Not infrequently parents are divided over the choice of school, and a transfer should be granted only where the family is united in the request. The Court finds no good purpose to be served by the requirement that the executed form must be returned by the parent in person.

21. The proceedings in this cause have had wide publicity in Mobile County. Details of the plan, orders of the Court, and periods designated by the plan and the Court have been disseminated through front page stories in the local press. In addition, a legal advertisement approved by this Court, was published. Some 500 pupils actually requested transfer within the designated period.

22. The assignment of teachers and administrative personnel without regard to race raises different and even more delicate problems than are encountered in pupil desegregation. The close personal relationship that must exist between teacher, pupil and parents for maximum educational effect would be adversely affected by any efforts toward teacher and staff desegregation at this time. Local school officials testify that the supply of qualified teachers while increasing, is still inadequate and that any desegregation of teachers or staff at this time would result in the loss of some qualified teachers now employed. The Court finds this to be a probable result.

23. It is not necessary or desirable to desegregate teachers and administrative personnel in the desegregation process as to pupils in the schools of Mobile County. It is the finding of the Court that such a step would render the desegregation of pupils more difficult and add a premature burden to the defendant Board, which is in good faith proceeding with the administration of its plan.

District Court Opinion of March 31, 1965

CONCLUSIONS OF LAW

1. The selection of the desegregation plan is the function of the School Board, rather than the Court. Once formulated by the Board, the Courts are charged with scrutinizing it for any discriminatory features.

It is elementary that the courts cannot plan, administer and operate the public school system. The selection and activation of the particular method or plan of desegregating a school system is the responsibility and function of the School Board in the first instance. These two principles have been enunciated in most of the school desegregation suits. The Board, with its knowledge of local conditions, its experience with established administrative procedures, and having at its disposal persons possessed of professional training and skills, is the only entity fully qualified to carry out the "duty and responsibility to formulate a desegregation plan." The case of *Briggs* v. *Elliott,* 132 F. Supp. 776, adopted as to reasoning by the Court of Appeals for this Circuit in *Avery* v. *Wichita Falls,* 241 F.2d 230 and in *Boson* v. *Rippy,* 285 F.2d 48, summarizes the philosophy underlying these principles, as well as the judicial function:

> "The Supreme Court has pointed out that the solution of the problem in accord with its decisions is the primary responsibility of school authorities and that the function of the courts is to determine whether action of the school authorities constitutes 'good faith implementation of the governing constitutional principles.' "

The basis for these established principles is expressed somewhat differently in *Kelley* v. *Board of Education of Nashville,* 270 F.2d 209:

> "Because of the nature of the problems and the local conditions, the school authorities often find that action taken by other school districts is inapplicable to the facts with which they are dealing . . . the public interest must be considered, along with all the facts and conditions prevalent in the school district. Educational standards should not be lowered."

Following directly after this reasoning, the court goes on to point out the judicial function:

> "If the school authorities have acted and are proceeding in good faith, their actions should not be set aside by a court so long as their action is consistent with the ultimate establishment of a non-discriminatory school system at the earliest practicable dates."

The Board of School Commissioners of Mobile County has selected and prescribed a plan founded in administrative procedures applicable to local conditions and established by many years' use. It is soundly conceived and developed from an educational standpoint. So long as the plan is non-discriminatory, the basic elements should not be disturbed by the Court. This is the only test the Court should apply.

2. The desegregation plan in use in Mobile County is a constitutional plan.

The plan in use for the past two years in the Mobile school system is non-discriminatory. This Court, on two prior occasions, and the Court of Appeals for this Circuit, on one occasion, have considered the Mobile County plan and found it to meet constitutional standards in all particulars save speed of application and minor time provisions. It is a plan founded upon educational concepts and administrative procedures in use in Mobile County for many years. It is, and has been, an attendance area system, utilizing the concepts of the neighborhood school, limited administrative control of enrollment but without utter rigidity, and provisions for a transfer request period for upper grades and a pre-registration time for 1st graders. These concepts and procedures are efficient and non-discriminatory bases for the administration of a school system.

The use of school attendance areas, if not devised on racial lines, is non-discriminatory and is a proper provision in a desegregation plan. *Downs* v. *School Board,* 336 F.2d 988, cert. den. ——U.S.—— (March 1, 1965). This Court has considered the newly defined single zone attendance areas and the testimony of those who re-defined these areas and has found as a matter of fact that the attendance areas were not racially devised but were laid out in accordance with proper factors and are, therefore, constitutional.

The plan makes use of the Alabama Pupil Placement Law as a proper vehicle of administration. That portion of the plan founded upon the Alabama Pupil Placement Law continues all pupils at the schools where they are in attendance unless a transfer is granted. The plan provides

for the consideration of transfer requests without regard to race. As a part of the transfer provisions, the Board has so interpreted the plan as actually to discriminate in favor of Negro students who, because they formerly lived in an old dual district, are attending a school predominantly of their own race. Under those circumstances transfers are permitted without the application of any of the criteria under the Pupil Placement Act. This has the effect of curing a discriminatory situation pre-existing the inception of the plan, for those pupils whose parents desire that result. The Alabama Pupil Placement Act is, on its face, constitutional, and the fact that the defendant School Board affords an opportunity to cure past inequities merely accentuates the propriety of the Board's use of the Placement Act.

Engrafted to the basic pupil placement law plan, the Board has made further provision to permit the initial enrollment, as a matter of absolute right, of first graders, newcomers, and people moving from one attendance area to another, in the school of the attendance area of the residence of the pupil. The option is granted to any pupil for any reason, to enroll initially at the nearest school formerly serving his race. The absolute right to attend a school within the attendance area of the residence, coupled with the option, is proper in the local situation, since it affords some flexibility but has a limiting effect desirable for planning purposes. Since the present attendance areas are not racially designed and a majority of the attendance areas have persons of both races living within them, the tendency of these provisions would be to promote desegregation but not to require integration. The Court is of the opinion that

the option granted to initial enrolees does not violate the prohibition against "minority transfers." The option is granted without regard to the race of the pupil, the reason for the exercise of the option, present racial makeup of the school within the attendance area, or the present racial makeup of the optional school. The "minority transfer" rule, enunciated in *Goss* v. *Board of Education,* 373 U.S. 683, deals, of course, with transfers as opposed to initial enrollment. The same principles would govern. There the court said:

> "Our task then is to decide whether these transfer provisions are likewise unconstitutional. In doing so, we note that if the transfer provisions were made available to all students regardless of their race and regardless as well of racial composition of the school to which he requested transfer we would have an entirely different case. Pupils could then, at their option, (or that of their parents) choose, entirely free of any imposed racial considerations, to remain in the school of their zone or to transfer to another."

In addition, the case distinguished situations such as here presented, by saying:

> "Likewise, we would have a different case here if the transfer provisions were unrestricted, allowing transfers to or from any school regardless of the race of the majority therein."

This plan meets the test prescribed in *Northcross* v. *Board of Education,* 302 F.2d 818, wherein the Court said:

"Minimal requirements for non-racial schools are geographic zoning, according to the capacity and facilities of the buildings and admission to a school according to residence as a matter of right."

Except as to speed of application, the particular plan now before the court is the same plan as was before the Court of Appeals in 1964, *Davis* v. *Board of School Commissioners*, 333 F.2d 53. At that time, the Court approved it as to all elements except speed. Seven criteria were set out in that opinion, all of which have been met by the present plan. All of these criteria, except speed of application, were present in the plan as considered at that time. It is a constitutional plan and if it be constitutionally administered, any effort to effect a change therein must fail.

3. The desegregation plan has been administered without discrimination by the defendant Board.

The burden of much of plaintiff's argument was that only a limited number of Negro students "have experienced desegregated education" under the desegregation plan as administered in Mobile County.

The Supreme Court has declared that *Brown* v. *Board of Education*, 347 U.S. 483, "decided that enforced racial segregation in the public schools of a State is a denial of the equal protection of the laws enjoined by the Fourteenth Amendment." *Cooper* v. *Aaron*, 358 U.S. 1.

As was said in *Briggs* v. *Elliott*, supra:

"The constitution, in other words, does not require integration, it merely forbids discrimination. It does not

forbid such segregation as occurs as the result of voluntary action."

Again, in *Downs* v. *School Board*, supra, as to which the Supreme Court denied certiorari on March 1, 1965:

"... The better rule is that although the Fourteenth Amendment prohibits segregation, it does not command integration of the races in public schools and Negro children have no constitutional right to have white children attend school with them."

The *Downs* case is in accord with decisions from the Fourth, Fifth and Sixth Circuits, cited as supporting this basic rule.

The Court of Appeals for this Circuit in *Boson* v. *Rippy*, 285 F.2d 43, 48 points out:

"Indeed, this Court has adopted the reasoning in *Briggs* v. *Elliott* . . . and has further said: 'The equal protection and due process clauses of the Fourteenth Amendment do not affirmatively command integration, but they do forbid any state action requiring segregation on account of their race or color of children in the public schools. *Avery* v. *Wichita Falls*, etc. 241 F.2d 230, 233.'"

Those transfer requests that were denied by the defendant Board for the current school term, were denied without regard to race. Some requests for transfer were filed after the termination of the transfer request period and were properly denied for this reason. It is reasonable that

there be a deadline for making transfer requests since the Board makes no determination as to granting transfer requests until after all are received in order that the effect of such transfers on particular schools may be measured. This is a reasonable requirement and the Board has denied transfer requests by pupils of both races if they were filed after the end of the transfer request period. Other transfer requests were denied because they requested transfers outside the attendance area of the residence of the pupil and no valid reason for making an exception to the rule appeared. These involved pupils who never resided in one of the old dual school zones and the denials were proper. Again, the Board acted in the same manner in the case of Negro and white pupils. Other transfer requests were denied because they sought transfer to a school which was so overcrowded that as many as 100 students were then being transported away from the school to which the transfer was requested. These were denied for proper and reasonable reasons without regard to race.

Criteria set out in the plan from the Alabama Placement Act such as those lettered (l) and (n), have to do with public hostility; and, such as (i) and (m), have to do with psychological effects upon the transferee or the pupils in attendance at the school to which the transfer is requested. As a matter of law, these criteria are not properly retained in the plan and must be deleted. The Board does not give any special tests in considering transfers and test results have not formed the basis, and do not, for the granting or denial of transfers. While this Court will not require that the provisions for testing be stricken, it does require that

if tests are used, they be used without regard to race. The Court finds no practice nor intention on the part of the Board to use any special testing procedure in acting upon transfer requests.

Earlier in this opinion, while considering the plan itself, the Court concludes that the redrawing of school attendance area lines to eliminate the last vestiges of the dual zone system, has been done without regard to racial factors but upon proper educational considerations. In the administration of the plan the Court recognizes the right of the Board to make use of school attendance areas, and finds as a matter of law that the school attendance areas are prepared without discrimination.

For the reasons set out in the Findings of Fact, the Court finds the requirement that a parent pick up a transfer request at the School Board office, and that it be signed by both parents unless such be impracticable of accomplishment, are reasonable and proper safeguards in and about the administration of the public school system, so long as these procedures are administered alike to both races. The Court has found that the requirement was so administered. The requirement that the completed form be returned in person by the parent is unreasonable and said forms may be returned by mail. With this change, the transfer procedure is reasonable and not unduly burdensome.

The Court is convinced that the notice given of the terms of the plan and of the deadlines involved in prior years has been reasonable in view of the limited time available to give such notice. However, with the time now available to defendant Board before the transfer request period and the beginning of the ensuing school year, the Court is of the

opinion that some additional information should be furnished to school patrons with regard to the terms of the desegregation plan and the various deadlines involved. The decree entered pursuant to these findings and conclusions will direct the defendant Board to give such additional notice, through ordinary school channels, to school patrons as will afford them a reasonable and conscious opportunity to apply for transfer or admission of pupils to any school they would otherwise be eligible to attend without regard to race. This notice has been approved by the Court and is a part of the record in this case. (See Appendix A)

4. In 1964-65 the speed of application for the plan was doubled. It is now applicable to grades projected by the Court of Appeals to completion in 1969. One-half the grades will be affected in 1965-66 in the third year of the administration of the plan. Circumstances, as adduced from the testimony and the answers to interrogatories, demonstrate the desirability of continuing with a rate of speed as set out in the plan. The schools are still crowded, the system continues to grow, the pace of building new schools and adding to existing facilities to catch up continues without abatement. The maintenance of educational standards and provision of time to solve problems created by desegregation and crowded conditions dictate adherence to the schedule prescribed. As a matter of law, the defendant Board has borne its burden of demonstrating justification for no additional increase of speed.

5. There is no right, enforceable by these plaintiffs, to a desegregation of the teachers and administrative personnel unless such be a necessary or desirable factor in the desegregation of students. Such a move at this time would be harmful to the general relief originally sought by the plaintiffs and should not now be ordered.

The plaintiffs here are pupils in the public school system of Mobile County. The constitutional right which plaintiffs are entitled to have vindicated is the right not to be discriminated against in the school system because of their race or color. Unless there be shown that the assignment of teachers and other personnel without regard to race is a necessary or indispensable factor in the vindication of plaintiffs' rights, they are not entitled to this relief.

Dated this the 31st day of March 1965.

* * * * *

DECREE

This cause having come on to be heard on February 26 and continued to March 5, 1965, on plaintiffs' Motion for Further Relief and on defendants' answer thereto; oral testimony, answers to interrogatories, exhibits and an affidavit having been considered, and the Court having heard and considered arguments of counsel; and Findings of Fact and Conclusions of Law having been made by the Court;

It is, therefore, ORDERED, ADJUDGED and DECREED as follows:

1. The provision in the procedure for requesting transfers in the Plan that requires the return of the completed

form by the requesting parents, in person, is stricken, and said forms may be returned to the School Board offices by United States mail or any other convenient method.

2. Those criteria for transfer in the Plan designated (i), (l), (m), and (n) are improper criteria and hereby stricken from the Plan.

3. The defendant Board is directed to give such additional notice, through ordinary school channels, to school patrons of the terms and time limitations of the Plan as will afford them a reasonable and conscious opportunity to apply for transfer or admission of pupils to any school they would be eligible to attend without regard to race. (See notice listed as Appendix A)

4. In all other respects the desegregation plan of the defendant Board is approved as a constitutional plan and the administration thereof as non-discriminatory.

5. In all other respects except as ordered hereinabove, the motion of plaintiffs is denied.

6. Jurisdiction of this cause is retained to enter such further orders and to take such other proceedings as may be meet and just in the premises.

Entered this 31st day of March, 1965.

APPENDIX A

Information to Parents

Following are the terms of the Desegregation Plan adopted by the School Board pursuant to Court order:

If your child is presently in attendance in the Mobile County Public School System and will be in the 2nd, 9th, 10th, 11th, or 12th grade next year and you wish him to attend a different school in September, 1965, for good reason, without regard to race, you may make application therefor on or before April 15, 1965 and such transfer request will be considered by the Board without regard to race.

Regulations require that a parent pick up a transfer request form in person and that both parents sign or the reason be stated why both parents cannot sign. The completed form may be returned in person on or before April 15, 1965, or mailed back to the Board. If mailed, it must be postmarked prior to midnight, April 15, 1965, to be considered.

If your child is to enter the 1st grade of the Mobile County Schools for the term 1965-66, he must be pre-registered on Thursday, April 22nd, at either of two schools, depending upon your preference. He has the right to enroll in the school serving the attendance area in which you reside or, at your option, you may enroll him in the nearest school formerly serving your race. This is your choice.

If your child is a newcomer to the System or if you have moved from one attendance area to another and your child

is in the 2nd, 9th, 10th, 11th, or 12th grades, you have the same option for your child as if he were a first grader.

For the year 1966-67 two more grades will be added to the grades above set out; being the 3rd and 8th grades. Additional grades will be added year by year in accordance with the Plan.

Court of Appeals Opinion of August 16, 1966

Before TUTTLE, Chief Judge, THORNBERRY, Circuit Judge, and LYNNE, District Judge.

TUTTLE, Chief Judge:

This is the fourth appearance of this case before this court. This present appeal, coming as it does from an order of the trial court entered nearly eighteen months ago, on March 31, 1965, points up, among other things, the utter impracticability of a continued exercise by the courts of the responsibility for supervising the manner in which segregated school systems break out of the policy of complete segregation into gradual steps of compliance and towards complete compliance with the constitutional requirements of Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 38 A.L.R.2d 1180. One of the reasons for the impracticability of this method of overseeing the transitional stages of operations of the school boards involved is that, under the Supreme Court's "deliberate speed" provisions, it has been the duty of the appellate courts to interpret and reinterpret this language as time has grown apace, it now being the twelfth school year since the Supreme Court's decision. Another is that appellate court requirements have grown more exacting as time has passed, and during the last eighteen months pronouncements of this court have interpreted the Supreme Court's interim decisions as requiring considerably greater measures of desegregation. Thus a decision by a trial court

eighteen months ago is not likely to reflect the current law on the subject.[1]

In 1963, the Mobile County schools, both within the city of Mobile and outside the city limits, were completely segregated according to race. In March 1963, the plaintiffs filed this suit to require compliance by the Mobile County School Commissioners with the requirements of Brown v. Board of Education of Topeka. The plaintiffs requested a temporary injunction in order to require a start in desegregating the schools in the fall of 1963. The trial court, after a hearing in May, neither granted nor denied the motion, but granted time for the filing of written briefs. Appellants treated this as an order "denying" an injunction. Cf. United States v. Lynd, 5th Cir., 1962, 301 F.2d 818, and appealed. We held this temporary delay was not an abuse of discretion by the trial court, but stated: "The matter of the grant or denial of the motion for preliminary injunction, should, as in every case, be promptly determined." Davis v. Board of School Commissioners of Mobile County, 5th Cir., 1963, 318 F.2d 63, 64. We also said: "[T]his court must require prompt and reasonable starts, even displacing the District Court discretion, where local control is not desired, *or is abdicated by failure to promptly act.*" (Empha-

[1] Lest this concept of changing requirements be criticized, we must call attention to the fact that the delaying of full vindication of a person's constitutional rights as was done in the School Desegregation Cases is itself a novel concept, requiring constant reappraisal of the degree of compliance by the school systems. It must also be borne in mind that this school board ignored for nine years the requirement clearly stated in Brown that the School authorities have the primary responsibility for solving this constitutional problem.

sis added.) id. p. 64. This was the first appearance of the case in this court.

On remand, the District Court still declined to grant an injunction and set the case for trial in November, thus permitting the tenth year to pass without any compliance with the constitutional requirements. The order of denial was an appealable order. It was appealed, and a motion for an injunction pending appeal was filed and heard by this court.

On July 9, 1963, this court granted appellant's request for injunction pending appeal, requiring a measure of desegregation to begin in at least one grade for the 1963-64 school year. Davis v. Board of School Commissioners of Mobile County, 5th Cir., 322 F.2d 356. This was the second appearance of the case here.

Upon the approval by the trial court of an initial plan, appellants again appealed to this court, contending that the rate of desegregation of the grades fell short of the current requirements of the decisions by the Supreme Court and this court, and that there had not been a complete abolition of dual zones for white and Negro children. This court reversed the District Court's order approving the plan. We prescribed definite minimum standards and shortened the time eventually desegregating the several grades of the school. Included in the opinion of this court was the requirement that dual school zones, areas, or districts be abolished. By incorporating the language of the opinion in Armstrong v. Board of Education of the City of Birmingham, 5th Cir., 333 F.2d 47, decided the same day, this court said: "The dual or bi-racial school attendance system, that is, any separate attendance areas, districts or zones, shall be abolished as to each grade to which the plan is applied

and at the time of the application thereof to such grades, and thereafter to additional grades as the plan progresses. * * * The plan shall apply to the admission of new pupils coming into the school system for the first time." Id. at 51. Davis v. Board of School Commissioners of Mobile County, 5th Cir., 1964, 333 F.2d 53. This was the third appearance of this case here.

After the mandate from the 1964 decision became the order of the District Court, that court again approved a plan of desegregating the Mobile County schools. Its order approving the Board's plan is now the subject of this fourth appeal. This plan embodies the following principal provisions:

(1) All existing school assignments shall continue without change except when transfers are authorized by the Assistant Superintendent in charge of pupil personnel under the provisions of the plan. (This means that all Negro and white children who had entered Negro and white schools respectively would continue to attend those schools unless transferred.)

(2) Transfers as to the desegregated grades could be applied for between April 1 and April 15 of each year for the next succeeding year. As originally written the transfers were subject to the requirements of the Alabama Pupil Placement Act, having many subjective tests. It is apparent that during subsequent years these tests were not, in fact, resorted to, but transfers were granted or denied largely upon other factors, not announced publicly and not fully specified in this record other than the general ground of the lack of space

for the student seeking transfer in the school to which transfer was requested.

(3) New student assignments. New students applying for admission to the first grade or pupils registering for the first time in other grades to which the plan has become applicable "may apply for attendance at the school in the district of their residence, or the nearest school *formerly attended exclusively by their race* at their option."

(4) All faculties of the schools of Mobile County are assigned according to race.

The school population of the Mobile County School System for the year 1964-65 was approximately 75,000 pupils, and for the succeeding year some 79,000. 39% of the school population was Negro and 61% white. Substantially all of the school's buildings were crowded in 1963-64, but a program of building new schools was under way. The record does not disclose the present availability of seats in any particular school. The school system incorporated some 90 different school buildings at the time of the promulgation of this plan. Information supplied pending the appeal indicates that of the approximately 31,000 Negro students, 39 were attending class with white students during 1965-66.

In order to understand fully the working of the plan, it must be borne in mind, as disclosed upon the trial of the case, that a new map of "school areas" has been prepared by the Board of Education. These school areas are readily distinguishable as "white" and "Negro," although, in each of the areas, there is a sprinkling of persons of the opposite

race. The trial court found as a fact, that the area boundaries were not drawn with racial characteristics in mind for the purpose of maintaining a pattern of racial segregation in the area schools.[1a] However, the school superintendent testified (as was obvious to any who studied neighborhood patterns) that it was "generally true that the actual make-up of the school district [sometimes called "area"] tends to conform with the race of the school within that district." It must also be borne in mind that the junior high schools and senior high schools have operated on the "feeder" system, and it is demonstrated on the record that allocation of students to the junior high schools and senior high schools follow the racial pattern because only Negro elementary schools are feeders to the Negro junior high schools, and the latter are the only feeders to the Negro senior high schools. In other words, no Negro elementary school prepared students for a junior high school that was not entirely Negro, and no white elementary school prepared students for a junior high school that was not almost entirely white.[2]

The plan was to have application in the school year 1963-64 to the twelfth grade in the city of Mobile only, in the school year 1964-65 it was to have application to the eleventh and twelfth grades in all schools in Mobile County and

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[1a] We do not here pass on the correctness of this determination nor determine the legal effect that might result if de facto segregation were to continue by reason of the setting up of school districts even without any improper motive.

[2] The Board does not now class schools as white or Negro. However, the use of the designation is meant to convey the fact that the schools of Mobile are still either entirely Negro or almost entirely white.

to the first and tenth grades in the City of Mobile schools. In 1965-66 it was to have application to grades one, two, nine, ten, eleven and twelve of all schools of Mobile County. In 1966-67, grades three and eight were to be added, in 1967-68, grades four and seven were to be added, in 1968-69 grade five was to be added, and in 1969-70 it became applicable to grade six.

Further factual material that must be noted is that, as found by the District Court, "A larger variety of special courses is offered at those schools attended predominantly by white pupils."[3] The Board has no policy of permitting a Negro student of a grade not yet desegregated to transfer to a white school in order to take a particular course of study.

Essentially, it can be said that this plan, operating in a system in which space is tight, and where all students are "frozen" into the segregated pattern of attendance unless transfers are approved, provides little opportunity to break up the heretofore open identification of schools as white and Negro. Recognizing, as we must, the binding effect of

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[3] A larger variety of special courses is offered at those schools attended predominantly by white pupils, although in many instances the number of schools offering a particular course is only one more in the case of white pupils. There are about 50% more white pupils in the system than Negro pupils, making it reasonable that more schools attended predominantly by white pupils would offer a particular special subject. Many factors enter into a determination of courses offered in a particular school, and the course offerings vary from school to school without necessary regard to the race of the pupils. Facilities, pupil interest, location, and socio-economic factors all affect course offerings. There is no evidence that any application for transfer for the current year was predicated on a desire for a special course not offered by the school the pupil had been attending. The Assistant Superintendent in charge of pupil personnel could not recall a single such request.

the pronouncement in Brown v. Board of Education of Topeka, 347 U.S. 483, 495, 74 S. Ct. 686, 692, 98 L. Ed. 873, 38 A.L.R.2d 1180, that "[s]eparate educational facilities are inherently unequal," we conclude that the Mobile plan falls far short of the requirements of the law in several respects. Principal among these is the fact that even as to those grades which, under the plan, have actually become "desegregated" there is no true substance in the alleged desegregation. Less than two-tenths of one percent of the Negro children in the system are attending white schools. Another defect is in the length of time that the plan would require to come to a final fruition; another is the option given to white students living within the "area" or "district" of a given school to transfer to another district or area to attend a white school there, without the granting of a similar option to a Negro child residing within the area of a Negro school to transfer to a white school outside the area; a further significant defect is the lack of provision for a Negro child to attend a school offering particular subjects if such subjects are taught only in white schools; and finally, there is the failure of the plan to start desegregation of the faculties of the schools.

Both in the testimony and in the briefs, much is said by the appellees about the virtues of "neighborhood schools." Of course, in the brief of the Board of Education, the word "neighborhood" doesn't mean what it usually means. When spoken of as a means to require Negro children to continue to attend a Negro school in the vicinity of their homes, it is spoken of as a "neighborhood" school plan. When the plan permits a white child to leave his Negro "neighborhood" to attend a white school in another "neighborhood" it becomes apparent that the "neighborhood" is something

else again. As every member of this court knows, there are neighborhoods in the South and in every city of the South which contain both Negro and white people. So far as has come to the attention of this court, no Board of Education has yet suggested that *every* child be required to attend his "neighborhood school" if the neighborhood school is a Negro school. Every board of education has claimed the right to assign every white child to a school other than the neighborhood school under such circumstances. And yet, when it is suggested that Negro children in Negro neighborhoods be permitted to break out of the segregated pattern of their own race in order to avoid the "inherently unequal" education of "separate educational facilities," the answer too often is that the children should attend their "neighborhood school."

So, too, there is a hollow sound to the superficially appealing statement that school areas are designed by observing safety factors, such as highways, railroads, streams, etc. No matter how many such barriers there may be, none of them is so grave as to prevent the white child whose "area" school is Negro from crossing the barrier and enrolling in the nearest white school even though it be several intervening "areas" away. This court, in a number of decisions, notably Singleton v. Jackson Municipal Separate School District, 5th Cir., 355 F.2d 865, and Price v. Denison Independent School District, Board of Education, 5th Cir., 348 F.2d 1010, has called attention to the significant fact that the United States Congress, in passing the Civil Rights Act of 1964, declared a strong legislative policy against racial discrimination in public education.[4] The

[4] Act of July 2, 1964, Public Law 88-352, Title IV, §§ 401-410, 78 Stat. 246-249, 42 U.S.C.A. §§ 2000c to 2000c-9.

operative section of the statute expressly prohibits the exclusion of any person in the United States from participation in being denied the benefits of, or being subjected to discrimination under, any program or activity receiving federal financial assistance.[5]

We have also called attention to the publication by the Department of Health, Education and Welfare of a "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools."[6] We now call attention to the fact that a revised statement of policies has been issued by the Department as of March 1966.

In Singleton v. Jackson Municipal Separate School District, 5th Cir., 348 F.2d 729, this court said:

> "We attach great weight to the standards established by the Office of Education. The judiciary has of course functions and duties distinct from those of the executive department, but in carrying out a national policy the three departments of government are united by a common objective. There should be a close correlation, therefore, between the judiciary's standards in enforcing the national policy requiring desegregation of public schools and the executive department's standards in administering this policy. Absent legal questions, the United States Office of Education is better qualified

[5] 42 U.S.C.A. § 2000d provides as follows:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

[6] 45a C.F.R. Section 80(c), December 4, 1964, Pursuant to Section 602 of the Act, 42 U.S.C.A. Section 2000d-1.

than the courts and is the more appropriate federal body to weigh administrative difficulties inherent in school desegregation plans. If in some district courts judicial guides for approval of a school desegregation plan are more acceptable to the community or substantially less burdensome than H.E.W. guides, school boards may turn to the federal courts as a means of circumventing the H.E.W. requirements for financial aid. Instead of a uniform policy relatively easy to administer, both the courts and the Office of Education would have to struggle with individual school systems on ad hoc basis. If judicial standards are lower than H.E.W. standards, recalcitrant school boards in effect will receive a premium for recalcitrance; the more the intransigence, the bigger the bonus. * * *

"If Selma, Alabama, can commence with desegregation of four grades for 1965-1966, Jackson, Mississippi, can at least catch up. And indeed in all but the most exceptional cases, all school districts commencing desegregation in fall 1965 should be expected to do as well."

After having made this pronouncement, this court granted an injunction pending appeal and directed the Board of Education of the City of Jackson, Mississippi "to submit promptly a plan of desegregation extending to at least 4 grades for the year 1965-1966." With respect to this, the court then said: "As to details of the plan, *the Board should be guided by the standards and policies announced by the United States Office of Education in establishing standards for compliance with the requirement of Title VI of the*

Civil Rights Act of 1964." In Price v. Denison Independent School District Board of Education, 5th Cir., 348 F.2d 1010, this court said: "In Singleton v. Jackson Municipal Separate School Dist., • • • we accorded these minimum standards a high place in our future handling of school cases *totally without regard to whether a school district was seeking (or desired) Federal grants in aid.*" (Emphasis added) 348 F.2d 1010, 1013. Then, in the later case of Singleton v. Jackson Municipal Separate School District, 5 Cir., 355 F.2d 865, we restated the same principle of attaching great weight to the standards established by the Office of Education. We said: "HEW's statement of April, 1965 establishes only *minimum* standards of general application. In certain school districts and in certain respects, HEW's standards may be too low to meet the requirements established by the Supreme Court and by this Court; *we doubt that they would ever be too high.*" (Emphasis added.) 355 F.2d 865, 869.

Then, dealing with the specific provisions of the Jackson plan, this court said: "The school children in still-segregated grades in Negro schools are there by assignment based on their race. This assignment was unconstitutional. They have an absolute right, as individuals, to transfer to schools from which they were excluded because of their race.

"This has been the law since Brown v. Board of Education [of Topeka], 1954, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 [38 A.L.R.2d 1180]. Misunderstanding of this principle is perhaps due to the popularity of an oversimplified dictum that the constitution 'does not require integration'

[Briggs v. Elliott, E.D.S.C., 1955, 132 F. Supp. 776, 777]. But there should be no misunderstanding now as to the right of any child in a segregated class to transfer to a formerly all 'white' class, regardless of the slow pace of systematic desegregation by classes." Then pointing to the case of Rogers v. Paul, 382 U.S. 198, 86 S. Ct. 358, 15 L. Ed.2d 265, the opinion showed that, as required by that decision of the Supreme Court, it will hereafter be required that, where assignments of pupils were on a racial basis, they must now be permitted to attend the school from which they were originally excluded because of race. Thus, a Negro child living in area "A" which was predominantly white who was assigned to a Negro school in area "B", and who is still in attendance at the Negro school by reason of continuing attendance where originally assigned, is constitutionally entitled to an immediate transfer to the school from which he was denied admission, but which he would have been entitled to attend if of the other race. We find this to be clearly the holding of the Supreme Court in Rogers v. Paul.

Not only did this court spell out this requirement in the *Singleton* case, but during the summer of 1965, upon motion made on behalf of Negro plaintiffs, we entered seven per curiam orders in other cases remanding to the District Court "for further consideration in the light of Singleton v. Jackson Municipal Separate School District * * *." 349 F.2d 1020, 1022.

Thus, for many a year, it has been apparent to all concerned that the requirements of Singleton and Denison were the minimum standards to apply.

Thus it is, that regardless of the number of grades which, beginning next fall, are under the plan of desegregation,

the appellee Board must grant to any child whose original attendance at his present school was dictated by the policy of segregating children by race (as was done uniformly prior to September, 1963), the right, at his request, to attend the school which he would have been permitted to attend but for such racial policy.

All other pupils, that is, those who have entered their present schools without reference to racial attendance policies, were given the option of attending the school of their "area" (unmistakably identifiable as either a Negro or white "area") or the nearest school, outside the area, *formerly predominantly of their race.* Since it is perfectly obvious that this was a choice which permitted white students in a Negro "area" to transfer to the nearest white school, which privilege was not granted to entering Negro students, this is a plain violation of one oft-repeated requirement that dual school zones must be abolished. We conclude therefore that all of such Negro students who have entered under this policy must be accorded a similar choice. That is, they must be given the opportunity of remaining in the Negro school of their area or transferring to the nearest white school. Then, if any students who hereafter enter the system are given the blanket option of choosing the nearest white school rather than the Negro school of the area in which they reside, as is now the plan, this option must be afforded to all, Negro as well as white. Otherwise, this device has the effect of perpetuating the separation of pupils into the Negro and white schools. Such separation of classes by race is the thing that is condemned in Brown v. Board of Education of Topeka. Its perpetuation cannot be condoned on the theory that the Negro child

is given the privilege of transferring out of his area into another Negro school and the white child is given the right to transfer out of his area into a white school.

If the optional transfers we have here prescribed should overcrowd the white schools, then preference must be given to the pupil living nearest the school. See Gaines v. Doughtery County Board of Education, 5th Cir., 329 F.2d 823, 825.

Furthermore, in light of the specific requirements announced by the Supreme Court in Rogers v. Paul, supra, every consideration must be given by the Board to make possible the transfer of any Negro pupil to another school which provides a course of instruction which he desires to take, and which is not included in the curriculum of the school to which the "area" assignment practice places him.

Another panel of this court is considering appeals in eight other school desegregation cases. In all of these, the court has asked for briefs touching on the extent to which the courts could, and, if they can, should, give weight to, or rely on, H.E.W. guidelines and policies in cases now before the court.[1] Because this case was then pending, we also called on counsel to respond to these questions in this case.

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[1] These questions, submitted to counsel were:

(a) To what extent, consistent with judicial prerogatives and obligations, statutory and constitutional, is it permissible and desirable for a federal court (trial or appellate) to give weight to or to rely on H.E.W. guidelines and policies in cases before the court?

(b) If permissible and desirable, what practical means and methods do you suggest that federal courts (trial and appellate) should follow in making H.E.W. guidelines and policies judicially effective?

Court of Appeals Opinion of August 16, 1966

All of the cases referred to were argued orally and submitted to the court on May 24th. The present appeal was submitted to a different panel earlier. In none of the other cases is there involved a large metropolitan school district as is the case here. We are reluctant to wait any longer to permit the court fully to resolve all of the questions raised in the other appeals before announcing our conclusion as to minimum changes that must be put into effect by the appellee Board of School Commissioners from Mobile County for the next school year. We conclude that the requirements we have outlined are absolutely essential in order for this court's judgments to be consistent as we approach the twelfth year following the Supreme Court's decision in Brown v. Board of Education of Topeka.

In addition, two further modifications of the Mobile plan must be made. The first is that the time must be shortened in such manner that all grades will be fully desegregated by the beginning of school in the fall of 1967, the target date announced in the H.E.W. regulations. There is nothing on the record before us that demonstrates the need for any additional time under the formula announced in the *Brown* decision.

Second, the plan must be modified in order that there be an end to the present policy of hiring and assigning teachers according to race by the time the last of the schools are fully desegregated for the school year 1967-68.

As has already been stated, the actual supervision by the courts, especially an appellate court, of the steps by which the constitutional rights of the plaintiffs and their class are ultimately vindicated is highly unsatisfactory. The degree to which the appellee accepts the legal prin-

ciples announced by the courts as the guiding principles upon which it undertakes anew the task of operating a constitutionally valid school system, the simpler and more professionably (*sic*) acceptable to all will it be. As the Su-professionably (sic) acceptable to all will it be. As the Supreme Court and this court develop and announce additional legal principles affecting the "deliberate speed" principle, the Board should be guided accordingly. If it fails to do so, the trial court, under the doctrine of stare decisis, will be able to solve such additional questions as may arise in the application of the legal principles involved.

In order that the trial court may promptly enter an order making, or approving, modifications in the plan to conform to what is said here, the order of the trial court is reversed and the case is remanded.

The judgment shall issue forthwith.

LYNNE, District Judge, having recused himself, took no part in the hearing, consideration, or decision of this case.

District Court Order and Opinion of October 13, 1967

THOMAS, District Judge.

Order

This cause having come on to be heard on July 18-20, 1967, and July 24-28, 1967, and August 18, 1967, on Plaintiff's motion for further relief as amended, on Plaintiff-Intervenor's motion for supplemental relief, and on Defendant's answers thereto; oral testimony, testimony by depositions, answers to interrogatories, affidavits, and exhibits having been considered, and the Court having received and considered the written briefs of counsel and having heard and considered the arguments of counsel; and the Court being of the opinion that an immediate interim order is necessary with regard to certain action to be taken immediately;

It is, therefore, ORDERED as follows:

1. That those students whose places of residence have been changed from one elementary attendance area to another as a result of a change or alteration in attendance area boundary lines between elementary school attendance areas, during the 1966-67 school year, namely those changes in attendance area boundary lines set out in paragraph 2 hereof, should immediately be afforded an opportunity to transfer to the school serving the attendance area in which their residence now lies, or any other school afforded to them by the desegregation plan.

2. The attendance area boundary line changes concerned are:

(a) The boundary line between the Whistler attendance area and the Thomas attendance area.

(b) The boundary line between the Bienville attendance area and the Carver attendance area.

(c) The boundary line between the Barney attendance area and the Bienville attendance area.

(d) The boundary line between the Barney attendance area and the Ellicott attendance area.

(e) The boundary line between the Old Shell Road attendance area and the Fonvielle attendance area.

(f) The boundary line between the Warren attendance area and the Crichton attendance area.

3. In order to accomplish the above, a special transfer period shall be held on Monday through Thursday, August 28-31, 1967, during which time applications for these transfers may be made. Notice of this transfer period, approved by the Court, shall be given by publication of a display ad notice for three consecutive days immediately prior to the transfer period. Transfer request forms shall be available at the school board offices and at Thomas Elementary School and Ellicott Elementary School, during the transfer request period, and shall be picked up by parents or guardians, or the student involved if sixteen years old or older, in person. Any other appropriate procedures necessary to administration of the special transfer period shall be adopted and carried out.

4. In all other respects, except as ordered hereinabove, the motions of Plaintiff and Plaintiff-Intervenor remain

under submission, and jurisdiction of this cause is retained to enter such further orders and to take such other proceedings as may be meet and just in the premises.

Entered this 24th day of August, 1967.

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Notice

To All School Patrons:

Pursuant to the order of the United States District Court for the Southern District of Alabama, a special transfer request period is hereby established for Monday, Tuesday, Wednesday and Thursday, August 28, 29, 30, and 31, 1967, for parents or guardians of pupils in any of the categories set out below. Such parents or guardians must pick up the transfer application form at the school board office, Barton Academy Building, 504 Government Street, Mobile, Alabama, or Thomas Elementary School, 743 Alvarez Avenue, Prichard, Alabama, or Ellicott Elementary School, 1250 Craft Highway, Chickasaw, Alabama, in person, beginning Monday, August 28 at 8:00 a.m., and must return the completed form to said school board offices by mail or otherwise so that it will be received on or before 5:00 p.m., Thursday, August 31, 1967. Applications received after that time will not be considered.

Students in junior or senior high school who are sixteen years old or older may pick up their own transfer application form at any of the above places, but said form must be signed by their parent or guardian.

Notice of action taken on the transfer request will be mailed on or before Friday, September 1, 1967. If a trans-

fer request is denied, the parent or guardian of the pupil affected may appeal to the Board in writing prior to September 9, 1967. While such appeal is pending, the pupil concerned shall begin attendance at the school he would normally be attending but for the pending transfer request.

This special transfer request period is occasioned by changes in the boundary lines of certain school attendance areas. Pupils eligible to transfer during this special transfer period are as follows:

1. All those students in Grades 1 through 6, residing within the following boundaries shall be eligible to request transfers to the Whistler School, or to the nearest formerly white school to their residence outside the Whistler attendance area, or to the nearest formerly Negro school to their residence outside the Whistler attendance area:

> Area bound on the West by the GM&O Railroad, South by I-10 Highway, East by Gum Tree Branch, and on the North by Atmore Avenue North and Fall Avenue.

2. All those students in Grades 1 through 6, residing within the following boundaries shall be eligible to request transfers to the Thomas School, or to the nearest formerly white school to their residence outside the Thomas attendance area, or to the nearest formerly Negro school to their residence outside the Thomas attendance area:

> Area bound on the West by Main Street, South by Elba Avenue, East by GM&O Railroad, and North by Eight Mile Creek.

3. All those students in Grades 1 through 6, residing within the following boundaries shall be eligible to request

transfers to the Bienville School, or to the nearest formerly white school to their residence outside the Bienville attendance area, or to the nearest formerly Negro school to their residence outside the Bienville attendance area:

Area bound on the Southwest by Whistler Avenue, East by Brock Avenue, and North by Kirby and Cottonwood Street.

Area bound on the West by Whistler Avenue, South by Meaher Avenue, East by Craft Highway, and North by West Butler Street, Wilson Avenue and Peterson.

4. All those students in Grades 1 through 6, residing within the following boundaries shall be eligible to request transfers to the Ellicott School, or to the nearest formerly white school to their residence outside the Ellicott attendance area, or to the nearest formerly Negro school to their residence outside the Ellicott attendance area:

Area which includes only Hendricks and Taft Streets in Prichard.

5. All those students in Grades 1 through 6, residing within the following boundaries shall be eligible to request transfers to the Fonvielle School, or to the nearest formerly white school to their residence outside the Fonvielle attendance area, or to the nearest formerly Negro school to their residence outside the Fonvielle attendance area:

Area bound on the West by Lourdes Circle, South by Three Mile Creek, East by Rondo Road, and on the North by Pleasant Avenue.

6. All those students in Grades 1 through 6, residing within the following boundaries shall be eligible to request transfers to the Crichton School, or to the nearest formerly white school to their residence outside the Crichton attendance area, or to the nearest formerly Negro school to their residence outside the Crichton attendance area:

> Area bound on the West by Martin Street, South by GM&O Railroad, East by Mobile Street, and on the North by LeCren Street, Bay Shore Avenue and Springhill Avenue.

7. Parents or guardians of pupils in junior or senior high school, who reside in any of the above areas, are likewise eligible to request transfers. Those pupils in junior high school are eligible to transfer from the school they would normally attend to the nearest formerly white junior high school or the nearest formerly Negro junior high school to their residence. Those students in said areas who are in senior high school are eligible to transfer from the senior high school they would normally attend to the nearest formerly white senior high school or the nearest formerly Negro senior high school to their residence.

The employees of the School Board at any of the three above locations where applications may be picked up, will, upon request, furnish information to assist in preparing and filing the transfer application. Parents or guardians are invited to contact the Office of Pupil Personnel at Barton Academy during this transfer request period, in the event they have any questions which cannot be answered by persons handing out the applications.

Only those persons residing within one of the above seven areas are eligible to apply for transfer during this special transfer period. If you do not reside within one of the above areas, do not apply for such transfer.

BOARD OF SCHOOL COMMISSIONERS
OF MOBILE COUNTY

* * * * *

FINDINGS OF FACT

1. The Mobile Public School System is presently operating under an amended desegregation plan submitted pursuant to an order of this Court, and in turn a mandate of the Court of Appeals for the Fifth Circuit. The plan is dated October 18, 1966, and was filed in this Court on October 19, 1966. The Court finds that this plan, on its face, substantially complies with the Mandate of the Court of Appeals, and the Order of this Court.

2. The School System is a consolidated system in that it encompasses all of the public schools in Mobile County, both city and rural. The city portion is made up of the cities of Mobile, Prichard and Chickasaw, and the rural portion the remainder of Mobile County.

(a) The city portion of the system is divided into geographically designed attendance areas with specific boundary lines. The rural portion of the system is made up of considerably larger general areas, without sharply defined geographic attendance area boundary lines.

(b) For purposes of administration of the Plan, the two portions of the system, city and rural, are treated identically except for one basic difference, and this concerns the option provisions of the plan. Under the option provisions of the plan, students in the rural portion of the system have the right of attending either of two schools, at the option of their parent or guardian; while in the city portion of the system the option is to attend either of three schools, at the option of parent or guardian.

(c) The difference arises out of the following circumstances: widely scattered population in the rural portion; comparatively fewer schools in the rural portion, considerably larger general areas to be served by each school in the rural portion; and the existence of a bus transportation system in the rural portion of the system, operated by defendants.

3. Reduced to its basic terms the desegregation plan under which the defendant board is operating the Mobile County schools is as follows:

In the city portion of the system:

(a) Every student upon initial enrollment in the system has the absolute right to enroll in and attend the school serving his attendance area, or at his option, the absolute right to enroll in and attend the nearest formerly white school outside his attendance area, or the nearest formerly Negro school outside his attendance area. This absolute right is available to every student initially enrolling in the first grade, and at any other grade level.

(b) Every student, upon progressing from elementary school to junior high school has the absolute right to enroll in and attend the junior high school serving his attendance area, or at his option, the absolute right to enroll in and attend the nearest formerly white junior high school outside his attendance area or the nearest formerly Negro junior high school outside his attendance area.

(c) Every student, upon progressing from junior high school to senior high school has the absolute right to enroll in and attend the senior high school serving his attendance area, or at his option, the absolute right to enroll in and attend the nearest formerly white senior high school outside his attendance area or the nearest formerly Negro high school outside his attendance area.

(d) Every student, upon moving his residence from one attendance area to another, has the absolute right to enroll in and attend the school in his new attendance area, or at his option, the absolute right to enroll in and attend the nearest formerly white school outside his attendance area or the nearest formerly Negro school outside his attendance area.

(e) As to the rural portion of the system: The options are the same, with the exception that instead of a three school option, each student has the right to attend, at his option, the formerly white school or the formerly Negro school nearest to his residence, provided that the school is within walking distance, or that school bus transportation is available to the school, or that the student has private transportation to the school.

(f) While the plan limits options to physical space available, the Court finds as a fact that no student to date has been denied the exercise of an option due to physical space limitations. If the occasion arises, the stated policy of the defendant board is to provide special consideration for any student who might be otherwise denied the exercise of his option for this reason.

(g) It is the stated policy of the defendant board to arrange its transportation routes to provide transportation for every student in the rural portion of the system to either of the two schools selected in the exercise of the options provided under the plan. No student has been denied the opportunity of attending a school available to him under the provisions of the plan, for lack of public school bus transportation.

(h) In every instance, the right of option referred to is a right to be exercised by parents or guardians for and on behalf of their children. In every instance where reference is had to the *nearest* school, the nearness referred to is based upon proximity to the residence of parent or guardian.

(i) The options provided by the plan are applied in the same manner regardless of whether enrollment takes place at the beginning of school, later on during the course of the school year, during pre-registration of prospective first graders, or upon exercise of the grade level option in advance of promotion from elementary school to junior high school and junior high school to senior high school.

4. Students already in the system, in attendance at a particular school in the system, continue at that school from

year to year until (a) they reach the next option level; or (b) their parents or guardians move their residence to a different attendance area and exercise the option to attend the optional school for that area; or (c) a transfer is requested and granted.

5. The defendant board makes no initial assignments of pupils, but permits the free exercise of options provided by the plan without regard to the present racial make-up of the school or to the race of the pupil. Initial enrollment involves no transfer nor other special action of the board; likewise the exercise of the various options in the plan require no transfer or special action of the board.

For all students already in the system progressing from elementary school to junior high school and from junior high school to senior high school, a special form is provided, upon which the parent or guardian of the students state a choice of junior high schools, or senior high schools as the case may be, in exercising the options provided by the plan. It is mandatory that this form be completed and returned to school officials. With regard to all other options (first graders, newcomers in all other grades, and students who have moved from one attendance area to another) the students present themselves at the optional school of their choice and enroll.

6. In March 1967 approximately 14,300 students exercised grade level options upon moving from elementary school to junior high school and junior high school to senior high school for the 1967-68 school year. There were 6,615 first graders enrolled for the 1967-68 school year. Esti-

mates, based upon past experience, indicate that there will be some 4,000 to 5,000 newcomers to the school system at grade levels other than the first grade during the 1967-68 school year; and approximately 4,500 students who will move their residences from one attendance area to another during the 1967-68 school year. The Mobile Public School System has a total enrollment of slightly over 75,000 students. With reference to the 1967-68 school year, based on past experience, more than one-third of this enrollment has, or will, during the course of the year, exercise an option as provided under the plan.

7. Dual attendance areas based upon race existed at one time in the system, but have been abolished and a single attendance area system established. A map setting out the boundaries of attendance areas as they existed upon the opening of school in September 1967 has been furnished to the Court, and forms a part of the record in this cause. The practice of freely granting transfers to those enrolled in a particular school because of residence in one of the old dual attendance areas, plus the basic option provisions of the plan, has tended to overcome the discrimination that once existed because of dual attendance areas.

8. The single geographic attendance areas as they presently exist are not racially devised but are arranged by giving due weight to proper factors, i.e., natural and man-made barriers; safety factors, such as railroads and thoroughfares; maximum use of facilities; transportation facilities and other like considerations. Each attendance area has a certain interrelation with every other attendance

area, and the drawing of any attendance area boundary line must take into account the factors enumerated about as well as the interrelation of that line with all other lines of the particular attendance area concerned, and its relationship with other attendance areas. A majority of the attendance areas have both races residing within them.

9. The organization of attendance areas based on the neighborhood school concept is a long-standing practice in the administration of the school system in Mobile County. It is founded on a sound educational basis and the defendant board is justified in its use.

10. The defendant board has historically permitted parents some flexibility in selecting a school. A rigid system that requires all children of an area, without exception, to attend a particular school fails to take into account that school patrons and pupils are individuals with choices, likes and dislikes. Such rigidity is a major handicap to proper educational processes. However, such flexibility must be consistent with good administrative practices which require a reasonable amount of specificity to permit adequate planning and give some basis of stability to the system.

11. There are presently 93 schools in the system with additional schools in planning and construction. Half-day sessions have been eliminated but thousands of students are in attendance at schools where the enrollment exceeds the normal capacity of the school. This overcrowding is distributed evenly on a proportionate basis among schools where the enrollment is entirely Negro, schools where the

enrollment is entirely white, and schools where the enrollment is bi-racial. Much of this over-capacity, which otherwise would be overcrowding, is accommodated by portable classrooms. The schools in the system have not been designated by race for several years, and are not now so designated, although certain records relating to the schools and to students are kept on a basis by which students are designated by race. This has been necessitated by the demands of desegregation litigation, including this cause.

12. Transfers are granted upon request, for cause, and sufficient cause includes a number of reasons concerning primarily the convenience and well-being of students. Transfers are also granted, as a matter of course, upon bona fide requests for transfer to obtain a particular course of study not available at the school where the student is in attendance, and upon the requests of students who are in attendance at a particular school based upon a racial assignment due to residence in a former dual zone. Transfer requests are required to be made on an official form procured from the School Board office by a parent or guardian in person, and must be signed by a parent or guardian. The forms may be returned to the school board office by hand or by mail. April 1 through April 15 of each year is designated as the transfer request period. All transfer requests are considered without regard to race and upon the basis of the reason assigned for the request and other proper factors such as availability of space, transportation considerations, and the basic advantage of maintaining the neighborhood school concept. Any parent or guardian may appeal to the Board of School Commissioners from a denial

of a transfer request in writing within ten days of the mailing of notice of action on the transfer request.

13. In the administration of the transfer provisions and option provisions of the plan, there is no evidence of any discrimination by virtue of race. The evidence supports equal application of the policies and provisions of the plan to both races and the Court so finds as a matter of fact.

14. No special tests are administered to pupils of either race requesting transfers. No transfers have been denied arbitrarily or unevenly as between the races. During the April 1-15, 1967 transfer period approximately 387 completed transfer requests were received and acted upon; of these 288 were approved and 99 were disapproved. Of 121 requests for transfer by Negro pupils to predominantly white schools, 112 were approved and 9 were disapproved; of these 96 were granted on the basis of residence in a former dual zone, 12 were granted on request to obtain a particular course, and 4 were for other reasons.

15. Notice of the transfer provisions of the plan is given by newspaper publication of a display advertisement type notice for three consecutive days immediately preceding the transfer period. This form of notice is adequate but the Court feels that it would better serve its purpose if published once a week for three consecutive weeks next preceding the transfer request period. The content of the notice published prior to the transfer period in April 1967 was not sufficient in that it omitted specific reference to transfers due to residence in a former dual attendance

area. The content and time of publication of the notice must be changed accordingly.

16. Notice of the grade level options set out in paragraphs 3(b) and 3(c) above is given to the students already in the system who are subject to the grade level option by a form hand delivered to such students for delivery to their parents, execution by them, and return to the schools. The forms were delivered on March 9, 1967 and required to be returned on March 10. The Court feels that this did not allow sufficient time, and must be corrected. Principals were instructed to see that all forms were returned, and it is stated on each form that it must be returned; a vast majority of the forms, approximately 14,300 were filled out and returned, however it is not clear that all were returned.

17. Notice of the basic options provided by the plan excepting the particular provisions with regard to grade level options, is given by newspaper advertisement in the form of a display notice published for three consecutive days during the month preceding the opening of school. Notice in this manner is adequate. The form of notice published prior to the opening of school in September 1967 was sufficient. The Court feels that the publishing of this notice should be changed to once a week for three consecutive weeks immediately prior to the opening of school in September.

18. In addition to the specific published notices, defendant has given further publicity to the transfer period and the option provisions of the plan by directing information concerning these things to all daily newspapers in Mobile

County and all radio and television stations in Mobile County, with the request that the information be disseminated as news items.

19. Transfer request forms and the grade level option forms have not contained a designation of the specific schools to which transfer could be requested or to which grade level option may be exercised. Similarly, teachers and other employees of the board involved in the registering of students for attendance in the system where the exercise of an option is involved, have not volunteered information as to the options available, in the absence of a request by parent or student for such information. The Court feels that parents should be thoroughly informed in this regard, and that such parents and students should be made aware in the notices mentioned in Paragraphs 15, 16, and 17 above, that such information will be made readily available upon request, and likewise the method of request should be made known.

20. The enrollment of students in the system, where options provided by the plan are involved, and the handling of the grade level option forms, is done by teachers and other employees of the defendant board. Efforts in the form of instructional meetings with school principals and in the form of written instructions were made to properly instruct these people with regard to the provisions of the plan involved in their duties in that regard. In some instances, with regard to some teachers and employees, these efforts were not sufficient to adequately instruct them. The Court finds that additional steps to inform and instruct such personnel must be taken in the future.

21. This Court has retained continual jurisdiction of this cause for further proceedings and to hear any complaints or charges of discriminatory application of the defendant board's plan. No complaints have been lodged or filed in this Court by any individual as to any discriminatory action of the board in the administration of the plan.

22. All services, facilities, activities and programs with regard to each particular school in the system, are available to every student in that school, without reference to race. This includes the use of all facilities of the school, such as rest-room facilities, lunchrooms, laboratory facilities, special facilities and equipment; all programs of the school, such as athletic teams, band and choral programs, clubs and student groups; and all services and activities such as counseling, honor societies, dances and other social activities; and all other services, facilities, activities and programs. All services, facilities, activities and programs are available, as between various schools, without reference to the race of the pupils attending the schools. No services, facilities, activities or programs have been changed, curtailed or limited due to the race of the students, or due to the fact that a school has a bi-racial student body. No special waiting period or other qualifying factors or circumstances have been attached as a qualification to participation due to the race of any pupil. All student extracurricular activities, over which the defendant board has control, are conducted on a desegregated basis, as are all parent-related activities. There are some activities over which the defendant board has no compelling control.

23. The defendant board has formulated a specific initial plan for beginning faculty integration and has made an actual start upon that plan. There are presently, assigned permanently for the 1967-68 school year, 12 Negro teachers teaching in schools where the enrollment is predominantly white and 3 white teachers teaching in schools where the enrollment is predominantly Negro. Defendant has made a conscientious effort to select teachers for assignment to schools of their opposite race who would be thoroughly qualified by way of background, experience, training and disposition and who would be likely to do well in the position, for the stated purpose of laying the foundation for additional faculty desegregation in the future.

All general faculty meetings, teacher institutes, new teacher orientation programs, in-service training programs, in-service contract classes with the University of South Alabama, faculty committees, and all other faculty activities and programs are carried out on an integrated basis. Special teaching positions, such as teachers for classes at the Sixth District Tuberculosis Hospital, homebound classes, and special classes, are handled on an integrated basis.

Defendant has adopted a stated policy of employing and assigning teachers without regard to race, but in most instances continues to assign teachers with regard to race. The Court finds that it is the purpose and intent of defendant board to continue steps toward ultimate total desegregation of faculty personnel. The Court further finds that the policies adopted, the efforts made and the stated intentions of the defendant board to this end are proper and sufficient in the prevailing circumstances.

24. All staff and staff activities are integrated. Prior to the filing of the current plan the maintenance of separate office facilities at separate locations for Negro and white staff personnel were discontinued and the offices were consolidated in one place. The top staff positions of superintendent of schools and associate and assistant superintendent are held by white persons. The positions of supervisor and other staff positions, including secretarial and clerical positions and nurses, are integrated. All staff activities, programs, and committees are handled on an integrated basis.

25. The defendant board has instituted two remedial programs intended specifically to apply to and raise the educational level of Negro students in the system. One of these is carried on with the approval and cooperation of the Office of Economic Opportunity. The other has received the commendation of the Office of Education of the Department of Health, Education and Welfare.

26. The defendant board has initiated and completed three school consolidations. In one of these, one bi-racial school was consolidated with another bi-racial school. In both of the other two consolidations, a school attended entirely by Negroes has been discontinued and the school, its student body, and its attendance area consolidated into a school or schools that were, before the consolidation, in one instance entirely white and in another predominantly white. Additional consolidations would be difficult for the present due to a general lack of sufficient classroom capacity as compared to enrollment. The Court finds that

the defendant board has exhibited an intent to proceed with the consolidation of schools, without regard to race, where feasible, desirable and sound from an educational standpoint in light of all surrounding circumstances.

27. The Court finds as a fact that Mobile County has both a shifting population and a growing population; that there is commercial encroachment into former residential areas; that there are highway construction projects in the urban areas displacing population; that there are several urban renewal and other similar projects that have or will both displace population, temporarily and permanently, as well as attract population; and that there are other changes in residential patterns taking place, including racial changes.

The defendant board is pursuing a policy of locating new schools with relation to known or anticipated areas of population concentration. Some school sites are acquired many years in advance, some are never used because population does not develop as anticipated. Some school construction projects are planned many years in advance, and some are changed on one or more occasions before construction is commenced. An effort is made to locate new school construction where it is needed. Since the beginning of this litigation the defendant board has pursued a policy of constructing, adding to, renovating and repairing its school facilities without reference to the race of the pupils concerned.

28. Furnishings, fixtures, equipment and facilities are allotted to all schools on an equal basis without reference

to the race of the pupils attending the school. All allotments of textbooks, supplies and funds for supplies are allocated on an equal basis without reference to the race of the pupils concerned. Courses of study are available to all schools on the same basis without reference to the race of the students attending the various schools. Many courses of study may be offered at one or more schools and not at others. These offerings are made without reference to the race of the pupils at the school and on the basis of requests of the principals of the schools. The Court finds as a matter of fact that facilities, equipment, furnishings, textbooks, materials, allocated funds, and courses of study are made available to all schools on the same basis, without regard to race.

During the 1967-68 school year twenty transfers were granted to pupils in order to take a particular course of study; of these 12 were granted to Negro pupils and 8 to white pupils.

29. A number of schools in the Mobile County Public School System have enrollments beyond the capacity of their permanent facilities. The defendant board has been building new schools at a rapid rate. The system is made up of schools of various ages; these schools therefore vary in appearance and quality of physical plant. The actual physical plants, as well as the furnishings, facilities, and equipment in those schools attended predominantly and entirely by Negro students are essentially equivalent to those attended predominantly and entirely by white students.

30. The proceedings in this cause have had wide publicity in Mobile County. Details of the plan, orders of the Court, and periods designated by the plan and the Court have been disseminated through numerous news stories in the local press. In addition, radio and television coverage of these details has been widespread.

31. In the past there have been occasions where a school has, within a period of one or more years, undergone a total change in the racial composition of its enrollment. The court finds that this has occurred on six occasions; four of these since the defendant has been under court order. None have occurred since the filing of the current desegregation plan. In each instance the change has been contemporaneous with a corresponding change in the racial composition of the general neighborhood and the attendance area surrounding the school.

The Court finds that none of these occurrences have resulted from nor been accompanied by bad faith upon the part of the defendant board, in light of all prevailing circumstances.

The Court recognizes that there could possibly be similar occurrences in the future, as a result of natural processes; the Court now states however for the benefit of the future, that it will not tolerate any such change as may result from arbitrary action as opposed to natural processes.

32. Based upon current figures there are 692 Negro pupils attending school in bi-racial schools, where the enrollment is predominantly white; at this time last year there were 181 students so situated. At the present time there

are 4 white students attending school in schools where the student body is predominantly Negro; at this time last year there were no white students so situated. At the present time there are in the system 33 bi-racial schools, or schools with bi-racial student bodies; at this time last year there were 15 schools so situated. There are presently 28 schools where the enrollment is entirely white, 32 schools where the enrollment is entirely Negro and 33 schools where the enrollment is bi-racial. Of the 33 bi-racial schools, 31 were formerly entirely white schools and 2 formerly entirely Negro schools. At the present time there are 29,031 students in the Mobile County Public School System attending bi-racial schools and receiving their education under integrated circumstances; at this time last year there were 15,650 students so situated.

Conclusions of Law

1. In order that a plan for the operation of schools meet constitutional standards, at least within this Circuit, it must reside within the four walls of *United States, et al. v. Jefferson County Board of Education, et al.* and companion cases, 372 F.2d 836. In that case are set forth detailed principles against which any plan must be measured. It prescribes no specific plan for application to all school districts but recognizes that "Freedom of Choice" or "Geographic Zoning" or indeed some hitherto non-categorized method may best serve the educational needs of an area. This Court, however, concludes that the same basic plan must be applied throughout any one system, since the administration of one type of plan in rural areas and another in city schools, with the students shifting between the two

frequently would be entirely too onerous and burdensome. The Mobile Plan, while differing in minor details as between rural and city schools is basically the same throughout the system. This is as it should be.

The Court of Appeals for this Circuit approves, as does this Court, of the selection by the particular board of any type of plan so long as such plan meets generally the basic elements in the *Jefferson County* case. Since the chosen vehicle for desegregation of schools in the cases consolidated with Jefferson County was the "Freedom of Choice" plan, the Court of Appeals made its measurement in the specific terms of "Freedom of Choice" plans and shaped its model decree in the terms of such plan. As generally agreed by all parties, and as is clear from the evidence adduced including the plan itself, the Mobile Plan is not a "Freedom of Choice" plan and the decree in the *Jefferson County* case is not applicable as such. But the Mobile Plan must meet the general tests prescribed in the opinion entered in that case. In fashioning conclusions of law in the instant case, this Court places the Mobile County plan alongside the pattern as set forth in Jefferson County and frames its decree in the terms of the method selected locally since this Court concludes as a matter of law that the Mobile County "Attendance Area—Option" plan is a constitutional method conforming in basic provisions to the principles in the *Jefferson County* case. It is not unlike the plan prescribed by the Court of Appeals in *Gaines et al.* v. *Dougherty County Bd. of Ed. et al.*, 334 F.2d 983. However, in certain areas it falls short or misses the mark and the decree to be entered pursuant to these conclusions of law is directed to a correction of those shortcomings. Reference

is made specifically to the sub-heads of the *Jefferson* opinion as these are set out beginning on page 890 of the reported case.

2. *Speed of Desegregation:* Since all grades in the Mobile System were reached by its plan in 1967, the plan meets standards as to speed.

3. *Mandatory Exercise of Grade Level Options:* There does not exist under the Mobile plan, nor has there existed for at least one year prior to the current term, any initial assignment of students by race. The three school option in the city portion of the system and two school option in rural areas, each including a school formerly white and formerly Negro, to which any student may present himself initially and enroll as a matter of right, avoids any semblance of assignment by race. Since all city attendance areas are non-racially devised; indeed being in most instances bi-racial; and comprise a system of single zones completely replacing the old dual zone system, race is not a factor in any initial enrollment and the plan's provisions in this respect are constitutional. The plan and regulations implementing it prescribe a mandatory choice with regard to the grade level options. The plan, to be constitutional, must make the exercise of the options mandatory, as to those parents or guardians whose children have reached a grade level option in moving from elementary to junior high and from junior high to senior high. The choice of optional schools by a student enrolling initially (including first graders) is already mandatory in that the presenting of the child to a particular optional school for enrollment is required and sufficient.

4. *Transportation:* The practice of the Board of transporting any student, who meets statutory requirements to be a transported student, to either optional school selected by him is proper. However, such provision is not adequately covered in the terms of the plan and this must be done. Notice of the availability of such transportation must be provided for and this is covered later in these conclusions under the subhead of "Notice."

5. *Notice:* The use of display advertisements to inform parents of the provisions of the plan as to options, initial enrollment and transfer rights; and the dissemination of this information through all public news media in the county; and the publication of maps showing the arrangement of attendance area lines and school locations have been carried out under the general supervision of this court and are sufficient except in the following particulars: (1) At any time that the boundary line of an attendance area is changed, those parents or guardians residing in the affected area shall be notified by letter, hand delivered or mailed, which letter shall specify the options which such parent or guardian has as to his children together with the method of exercising it. (2) The Board shall procure the publication *each year* prior to the opening of school of a map or maps showing arrangement of attendance areas in city schools and of rural schools; and the proposed bus routes based upon options theretofore exercised by students. (3) More attention must be given annually to insure that school personnel, including principals and teachers, are familiar with the option provisions of the plan, to the end that they may, with knowledge, assist parents in making

a conscious exercise of options available upon enrollment, transfer or when reaching a grade level option point. (4) All such notices must include the assurance that public transportation will be furnished to any pupil in the rural portion of the system properly exercising an option if he is thereby required to travel more than the statutory two miles. (5) Each such notice must contain an assurance that clarification and further information is available by telephone or personal conference at School Board offices.

This Court concludes that hand delivered notices to parents of those pupils who have reached a grade level option point is sufficient without the necessity of published notice, since this is the most effective means of giving notice where those to be notified are specifically identifiable. However, the notices heretofore used must be changed to provide the following: (1) All such forms, with option selected, must be returned and more adequate steps must be instituted by the Board to insure the mandatory exercise of the option provisions; (2) Such forms shall provide in a prominent place that further information may be obtained and questions answered in person or by telephone to School Board offices, listing the address and telephone number and extension where the parent may call; (3) Parents shall be afforded seven days within which to exercise the grade level option.

6. *Transfers:* The Board has acted properly as to granting transfers to correct racial assignments arising during the times when dual zones existed and to permit students to obtain particular subjects not offered at the school in which he is enrolled. The transfer provisions of

the plan and practices pursuant thereto are proper and constitutional except in the following particulars: (1) Notice of the transfer period shall, in addition to information contained in past display advertisements, contain in general terms the bases upon which transfers shall be granted and specific reference to correcting past racial assignments and subject matter transfers; (2) In addition to being available at the School Board office, transfer request forms shall be made available at the office of the principal of each senior high school in the system and the published notice of the transfer period shall so state. (3) Students in senior high school grades or who are 16 years old or older shall have the right to procure their own transfer request forms, and the published notice shall so state; (4) The notice to parents of action taken on transfer request shall be revised to show with more specificity the reasons for denial in those cases where the request is denied.

7. *Services, Facilities, Activities and Programs:* The services, facilities, activities and programs of the Middle County School System to the extent that the Board has power to control them, have been integrated and this Court is of the opinion that in this area the defendant board is acting with complete propriety.

8. *School Equalization:* The activities of the Board in school equalization is constitutional and proper. In closing the two small schools which had total Negro student bodies and consolidating these pupils into larger, new and more adequate schools, the Board has largely cured the deficiencies in this area. Two other small schools were also

closed with one school having a bi-racial student body and the other all white. Because of the magnitude of the building program in the Mobile County School System in recent years, the number of inadequate physical plants has almost disappeared. Many pupils are still housed in portable classrooms but these form a part of the schools to which they are attached and the Court finds them to be adequate as school rooms for a limited time.

The remedial programs being conducted with the cooperation of HEW and OEO (being the Title 1 Summer School Program and the teacher improvement program styled "Project Mobile") are adequate to upgrade student and teacher performance in low income areas, inhabited primarily by Negroes.

9. *Compliance Reports:* By virtue of periodic motions and hearings in this case since its inception, the Court has been kept informed of the progress of desegregation in the Mobile School System. However, this is no substitute for the requirement of scheduled compliance reports. In order that the Court and all parties be kept informed, the plan must provide for a status report to this Court by June 30 of each year and a second such report by September 30 of each year. Copies of such reports must be served upon counsel for the plaintiffs and for the intervenors.

10. *Desegregation of Faculty & Staff:* Insofar as staff and administrative personnel are at present concerned, these have been satisfactorily integrated. In addition, the Court has found as a matter of fact that all in-service training, administrative meetings, and other activities involving

teaching personnel at the school system level have completely abandoned separation by race and are, therefore, proper.

As a first year effort, the Court concludes that the assignment of 15 teachers to schools where the student body is predominantly of a race other than their own is a satisfactory beginning of faculty desegregation. All courts who have dealt with the question of faculty desegregation recognize it as the most difficult of the transitions to make. This Court is of the opinion that the activities of the board in selecting teachers with qualifications that would probably insure their success in a bi-racial situation is sound. It is more important that a sound beginning be made upon which can be based more extensive future desegregation of faculty than a helter-skelter assignment of teachers simply to accomplish more in numbers. Teachers assigned to schools where the students are predominantly of a race other than their own include city and rural schools; high schools and elementary schools; and both races. For the current year this is sufficient.

11. *Construction:* The practice of the Board in constructing new schools where concentrations of students are presently found or reasonably anticipated ultimately to be found, is sound.

In view of current decisions, however, including the *Jefferson* decision, this Court feels compelled to require that the defendant board keep the Court specifically informed with regard to its building program. The Board shall not construct or start construction on any new school without first making a comprehensive investigation concerning the

advisability and location of such school or schools and submit the same to the Court for its approval or disapproval. It is not desirable or necessary that any report be now made with regard to any project already in progress, including the Howard, Scarbrough, Emerson, and Williamson projects, as the Court is satisfied that none of these are racially motivated or inspired.

12. *Curricula, Textbooks, Supplies and Equipment:* The practice of the Board in allocating textbooks, supplies, equipment and all other items on an equal basis, without regard to race is sound and meets Constitutional standards. So too are the practices being pursued in arranging course offerings.

13. *Results:* The *Jefferson* opinion calls upon the Courts to scrutinize the results as one measure of the success of a particular plan. Those Negro students in predominantly white schools for the school year 1967-68 have quadrupled as compared with the prior school year. The 1966-67 school year likewise found the number of such students multiplied by about four over the previous year. The number of schools with bi-racial student bodies have doubled in the first year under the current plan and the number of total pupils in schools with bi-racial student bodies has doubled. In addition all pupils properly exercising an option in the rural areas are being transported to the school selected. A start has been made on faculty desegregation. All of these factors indicate that, measured by results, the plan is working. It is believed that the additional requirements set out in the decree, particularly as to the man-

datory features of the grade level option, the requirements as to additional information to be contained in the various notices, the more adequate preparation of personnel to explain options and counsel with parents, and the modification of procedures for requesting transfers all will have an effect upon results in future years.

DECREE

This cause having come on to be heard on July 18-20 and July 24-28 and August 18, 1967, on plaintiffs' Motion for Further Relief as amended and Plaintiff-Intervenor's Motion for Supplemental Relief and on defendants' answers thereto; pleadings, oral testimony, depositions, answers to interrogatories, exhibits and affidavits having been considered, and the Court having received and considered the written briefs of counsel, and having heard and considered arguments of counsel; and Findings of Fact and Conclusions of Law have been made by the Court; and the Court having heretofore entered an interim order in this cause dated August 24, 1967, but having retained the Motions under submission for further orders and proceedings:

It is, therefore, ORDERED, ADJUDGED and DECREED as follows:

1. Transfer request forms shall be made available during the transfer request period at the office of the principal of each senior high school of the system as well as at the School Board office and the published notice shall so state.

2. Students in senior high school or who have attained the age of 16 years shall be permitted to pick up forms for their own transfers and the published notice shall so state.

3. The form of notice to parents of action taken upon transfer requests shall be revised in such fashion as will indicate with more clarity the reason for the denial of the transfer request when such request is denied.

4. The published notice as to the transfer request period shall, in addition to information included in past display advertising, contain in general terms the bases upon which transfers shall be granted and shall make specific reference to the granting of transfers to correct past racial assignments based upon residence in a former dual attendance area and the availability of subject matter transfers.

5. Appropriate steps shall be taken to insure as nearly as possible the mandatory exercise by parents of the grade level options where appropriate.

6. The form letter directed to parents with regard to the grade level options shall include therein, prominently, the assurance that additional information will be provided by telephone or in person from the offices of the defendant board upon request. Said letter shall contain the address of the School Board office and the telephone number and extension to be called for such additional information.

7. Parents shall be afforded seven days within which to exercise the grade level option.

8. The defendant board shall procure the publication, annually, prior to the opening of the school year of a map or maps of Mobile County showing attendance area boundaries; location of schools; and anticipated bus routes.

9. The defendant board shall instruct its school personnel, including teachers and principals more adequately as to the provisions of the plan governing initial enrollment, grade level options, and transfer provisions in order that intelligent assistance may be given parents in the exercise of these rights.

10. The practice of the Board in furnishing transportation to eligible students who select a proper optional school shall be written into the plan itself and notice thereof included in the letter to parents regarding grade level options and the display advertising concerning initial enrollment.

11. The plan shall be amended to provide that when the boundary line of any attendance area is altered, any parent or guardian whose residence is placed in a new attendance area as a result of a change shall be entitled to exercise the option provisions of the plan just as if such parent or guardian had moved his residence from one attendance area to another; and the plan shall be further amended to provide that actual notice be given to the parents whose children are known to be affected thereby, by letter, which letter shall include an outline of the options available to the parent and the method of exercising the same.

12. Regular status reports shall be filed with this Court and copies furnished to all parties, as follows:

(A) By June 30 of each year, beginning June 30, 1968, the defendant will file with this Court a report containing the following information:

1. A map showing the name and location of each school planned to be used during the coming school year, and the location of all attendance area boundary lines; as well as a description of any changes in attendance area boundary lines that have occurred since the last report to the Court, and any contemplated for the coming school year.

2. A tabulation of the following as they are expected to exist for the coming school year:

   (a) The total number of schools and the number of bi-racial schools in system.

   (b) The total number of students in bi-racial schools.

   (c) The number of Negro students in bi-racial schools by grade, and an indication of how each has been so enrolled.

   (d) The number of white students in bi-racial schools by grade.

3. A tabulation of transfer applications filed during the most recent April 1-15 transfer period, showing with regard to each:

   (a) The name, grade and race of the student.

   (b) The school from which and to which the transfer was requested.

   (c) The action taken on the request, and the reason for denial, as to those denied.

4. (a) The planned faculty assignments for the coming year, listing each teacher by name, race, school and grade or subject taught.

(b) The number of faculty vacancies, by school, that have occurred since the last report. The name and race of the teacher employed to fill each such vacancy, and an indication of whether such teacher is newly employed or was transferred from within the system. As to transferred teachers, the schools from which and to which transferred.

(B) By September 30 of each year, beginning September 30, 1968, the defendant will file with this Court a report containing the following information:

1. A notation and explanation of any attendance area boundary lines that are in effect, other than as reported on the map referred to in 12 (A) 1 above, with reference to the June 30 report.

2. A tabulation of the information required by 12 (A) 2 above, as it exists after the opening of school.

3. A tabulation of the information required by 12 (A) 4 (a) above, as it exists after the opening of school.

13. Except with respect to any building project already in progress, including the Howard, Scarborough, Emerson and Williamson projects, the defendant will, prior to beginning construction of any new school, make a compre-

hensive investigation as to the advisability and location of such school, and will submit the same to this Court for approval or disapproval.

14. The notice published prior to the opening of school each year, giving notice of the option provisions of the plan, shall contain the statement that information as to the optional schools available will be furnished upon request by the principals of all schools at the time of enrollment, or by telephone or personal request to the School Board office. And the address, and telephone number of the School Board office shall be given.

15. The plan shall be amended to require that all display advertisement notices published in the newspaper pursuant to the plan, shall be published once a week for three consecutive weeks, immediately preceding the occurrence of the event in connection with which the notice is given.

16. Defendants' desegregation plan filed in this Court on October 19, 1966 meets current constitutional standards and is therefore approved by this Court. In order to insure better operation of the plan the foregoing requirements shall be effectuated promptly.

17. In all other respects, except as to relief included in the interim order of August 24, 1967, plaintiff's Motion for Further Relief as Amended and Plaintiff-Intervenor's Motion for Supplemental Relief are denied.

18. Jurisdiction of this cause is retained to enter such further orders and to take such other proceedings as may be meet and just in the premises.

Entered this 13th day of October, 1967.

Court of Appeals Opinion of March 12, 1968

Before MARIS,* THORNBERRY and AINSWORTH, Circuit Judges.

THORNBERRY, Circuit Judge:

In the face of a vexing, continuing problem, this Court decreed that school boards in this Circuit have an affirmative duty to effectuate a transition to unitary racially nondiscriminatory school systems. This means integration of faculties, facilities, and activities, as well as students. The time for implementing programs that work is now. United States v. Jefferson County Board of Education, 5th Cir. 1967, 372 F.2d 836, aff'd en banc, 380 F.2d 385, cert. denied sub nom., Caddo Parish School Board v. United States, 1967, 389 U.S. 840, 88 S. Ct. 67, 19 L. Ed.2d 103.

With the law in mind, we turn once again to Mobile County, Alabama.[1] In 1966, another panel considered Mobile's plan for desegregation of schools and found it deficient in several respects:

> Principal among these [defects] is the fact that even as to those grades which, under the plan, have actually become "desegregated" there is no true substance in the alleged desegregation. Less than two-tenths of one percent of the Negro children in the system are attending white schools. Another defect is the length of time that the plan would require to come to a final fruition;

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* Of the Third Circuit, sitting by designation.

[1] Counting temporary measures and appeals on the merits, litigation concerning the desegregation of Mobile schools has now been before the Fifth Circuit five times since 1963.

another is the option given to white students living within the "area" or "district" of a given school to transfer to another district or area to attend a white school there, without the granting of a similar option to a Negro child residing within the area of a Negro school to transfer to a white school outside the area; a further significant defect is the lack of provision for a Negro child to attend a school offering particular subjects if such subjects are taught only in white schools; and finally, there is the failure of the plan to start desegregation of the faculties of the schools.

Davis v. Board of School Commissioners of Mobile County, 5th Cir. 1966, 364 F.2d 896, 901. The school board attempted to meet these objections and to comply with the Court's decision by (a) drawing new boundary lines for some of the school attendance areas or geographic zones, (b) making optional schools outside of attendance areas available to Negroes as well as whites, and (c) taking steps toward gradual faculty desegregation. In the urban areas of the county, a Negro or white student can now attend (a) the school serving his attendance area, (b) the nearest formerly white school serving his residence, or (c) the nearest formerly Negro school serving his residence. The optional schools, *i.e.*, the nearest formerly white and formerly Negro schools, are available only to students in the following categories: (a) Those enrolling for the first time in the Mobile Public School System; (b) those enrolling in the first grade; (c) those who change their residence from one attendance area to another; (d) those going from elementary to junior high school or from junior high school to senior

high. Transfer subject to approval is available to students of any grade. In the rural areas of the county, a Negro or white student can attend (a) the nearest formerly white school serving his residence or (b) the nearest formerly Negro school serving his residence. Because of the relatively small number of schools and the widely scattered population, the board did not consider attendance areas practical for the rural areas. As for faculty desegregation, the board selected a small number of white and Negro teachers to whom to offer the *option* of transferring to a school in which students and teachers of the opposite race predominate.

The district court held that the boundary lines for the attendance areas had been drawn on a nonracial basis and that the school board's over-all plan for desegregation of students was in substantial compliance with the Fifth Circuit decisions. The court also held that the board had made an adequate start toward desegregation of faculty.[2] While many subsidiary issues are raised on this appeal, the fundamental ones are whether this Court can put its stamp of approval on the attendance-zone lines drawn by the school

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[2] After exhaustive hearings the district court entered an "interim order" on August 24, 1967 requiring the Board of School Commissioners to afford Negro students in the metropolitan area an opportunity to transfer to predominantly white schools serving the areas of their residences as a result of boundary changes. The transfer period was to be held from August 28 through August 31; pupils were to be allowed to transfer to the new schools made available by the boundary changes or to the nearest formerly white or formerly Negro schools serving their residences. On October 13, 1967, the court denied the motions filed by appellants for further relief and entered the findings discussed in the text. This Court had previously denied appellants' motion for injunction pending appeal on September 13, 1967. This appeal was expedited.

board and the free-choice plan engrafted onto attendance zones and whether it can affirm the finding that the board has made an adequate start toward desegregation of faculty.

I. *Students*

We look first to the results produced by appellee's plan for integrating students in Mobile County. The Mobile Public School System, the largest in Alabama, has 93 schools. In round numbers, there are 44,000 white students and 31,000 Negroes for a total of 75,000. According to appellee's figures for the current school year (1967-68), there are 33 biracial schools in the system as compared with 15 a year ago. 29,031 students attend biracial schools as compared with 15,650 in 1966-67. 27,023 of the students attending biracial schools are white and 2,008 are Negro. There are 692 Negroes attending schools of predominantly white enrollment and 4 white students attending schools of predominantly Negro enrollment. Accepting the fact that this Court uses the HEW guidelines as a yardstick for measuring the progress of desegregation in particular school districts, the school board argues that it has more than satisfied HEW percentages. While the Guidelines require that a district employing a freedom-of-choice plan for at least two years have 15 to 18 per cent of its student population in desegregated schools, Mobile now has 29,031 or 38 per cent of its students in biracial schools.

The percentage of total students in biracial schools is superficially acceptable, but beneath the surface the picture is not so good. In its per curiam adopting the panel's opinion in *Jefferson County*, this Court said that school desegre-

gation can first be measured quantitatively, using percentages as a rough rule of thumb, but ultimately must be measured qualitatively, judging whether schools are still identifiable as white or Negro. 380 F.2d, at 389-390. Judging by the qualitative standard and by what we conceive to be the spirit of *Jefferson County,* we are unable to say that Mobile's plan is working so well as to make judicial interference unnecessary at this time. Two-thirds of the schools remain totally segregated and unquestionably identifiable as Negro or white; desegregation of the remaining schools has been so minimal that it would be generous to say they are no longer identifiable as Negro or white. Though Negroes comprise about 41 per cent of the student population, the crucial fact is that only 2,008 or 6.5 per cent of them are experiencing a desegregated education. Moreover, this figure of 6.5 per cent can realistically be reduced to 2 per cent (692) because 1,316 of the 2,008 Negroes attending biracial schools are in schools attended by only 4 white students. The only Negroes really experiencing a desegregated education are the 692 attending schools of predominantly white enrollment. Although this is 511 more than the number of Negroes who attended predominantly white schools last year (181), it is inarguable that the percentage of Negroes experiencing a desegregated education is still too low. The number of Negro children in school with white children is so far out of line with the ratio of Negro school children to white school children in the system as to make inescapable the inference that discrimination yet exists. See *Jefferson County,* supra, 372 F.2d, at 887.

Having found the results of the present plan unsatisfactory, we turn to the difficult question of what should be

done. Our primary concern is to see that attendance zones in the urban areas of Mobile County be devised so as to create a unitary racially nondiscriminatory system. Appellee contends, and the district court found, that boundary lines for the zones were drawn on a nonracial basis, using objective criteria such as natural landmarks and safety factors; but there is no information in the record by which this Court can judge whether the district court's determination was correct or not. The school officials who testified were unable to state clearly what criteria they used in determining the location of the various lines, and they were unable to produce the source material—maps, charts, memoranda, etc.—they used. For the benefit of reviewing judges who may be unfamiliar with the city or county in question, it is essential that school officials be able to state what criteria were used in determining geographic zones and to produce evidence to support their statements. In this case, it will be necessary for the board to do the job again, this time making a survey of the type suggested by appellants. On the basis of information obtained from the survey, school officials will draw attendance-zone lines on what they conceive to be a nonracial basis. If there is further litigation, evidence should be available to test the validity of the board's action.[3]

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[3] To support their assertion that the present attendance zones perpetuate segregation, appellants point out that in downtown Mobile there are overcrowded Negro schools in the same vicinity as under-populated white schools and also that in many instances a school is located on the periphery of the attendance area it serves rather than in the center. These facts, they say, suggest that considerations other than convenience of the students, namely race, determined the prseent zones. The board makes somewhat unpersuasive rebuttals to these points. We trust that when a survey is made and attendance-zone lines are thereafter drawn on a nonracial basis, these objections will not have to be renewed by appellants.

The school board has decided that assignment of students in its system should be based primarily on an attendance-area plan. Indeed, in a system as large as Mobile's, this approach is surely more practical than a pure free-choice plan. We therefore accept the board's policy decision in this regard but insist on a survey and a new effort to draw zone lines on a nonracial basis so that the attendance-area plan will promote desegregation rather than perpetuate segregation. It is intended that attendance areas be designated according to strictly objective criteria with the caveat that a conscious effort should be made to move boundary lines and change feeder patterns which tend to preserve segregation.[4] In the future, any boundary lines which simply encircle Negro residences without being explainable in terms other than race will be constitutionally suspect. To go a step farther, we hold that once attendance zones have been properly designated, the student's option to attend the nearest formerly white or formerly Negro school outside his zone must be eliminated.

It is important to clarify our reason for interfering with school management to the extent of requiring abandonment of the limited options. Under *Jefferson County,* a court is justified in requiring a board to change a particular school-attendance plan only when it is shown that the current plan

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[4] We have the impression that desegregation will be greatly advanced in Mobile if all students attend schools serving nonracial zones. In this regard, we quote from footnote 1 of the per curiam entered by the Court in Jefferson County:

> "In the South," as the Civil Rights Commission has pointed out, the Negro "has struggled to get into the neighborhood school. In the North, he is fighting to get out of it." Civ. Rts. Comm. Rep., Freedom to the Free. 207 (1963)

380 F.2d, at 389.

does not work.[5] In the instant case, the board has been on notice since it was last before this Court that a small percentage of Negroes attending school with white students represents a significant defect. After nearly two years, the percentage of Negroes experiencing a desegregated education has increased from .2 per cent to 2 per cent. Coming so late in the day, this is not enough progress. The idea of superimposing limited options on an attendance-area plan has failed to bring Mobile very far along the road toward the ultimate goal of a unitary system wherein schools are no longer recognizable as Negro or white. Since it is evident that the process of selecting optional schools has somehow thwarted the progress of desegregation, the logi-

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[5] We do not say that we are imposing a full-scale change of attendance plan on Mobile. The board has said that its primary allegiance is to the attendance-area or neighborhood-school concept as distinguished from pure freedom of choice. We would merely require the board to be true to that allegiance. In *Jefferson County*, the Court accepted local decisions to use freedom of choice but required certain changes which would promote desegregation rather than perpetuate segregation. In this case, we accept the local decision to use an attendance-area plan but require a change which we are convinced will promote desegregation. It seems clear to us that the selection of schools outside of geographic zones is thwarting progress that could be made if each student were confined to the schools serving his zone absent a nonracial reason for transfer. Therefore, we require the elimination of optional schools.

The district judge found that the limited options add a needed flexibility to the attendance-area plan—needed because students and parents have likes and dislikes that should be respected. In the interest of creating a system that measures up to constitutional standards, these options must nevertheless give way. As the Court said in *Jefferson County*, a student has no constitutional right to free choice of schools. 380 F.2d at 390. The school board, on the other hand, has a constitutional duty to desegregate its system.

cal solution is the abandonment of limited options.* As the Court said in the per curiam entered in *Jefferson County*, freedom of choice is not a goal in itself but one of many approaches available to school boards. If it does not work, another method must be tried. 380 F.2d, at 390. Since the limited options have not worked, we hold that after the boundary lines have been redrawn on a nonracial basis, each student in the urban areas must attend the schools serving his attendance zone absent some compelling nonracial reason for transfer.

Our discussion of attendance zones is confined to the urban areas; at this time, we defer to the board's view that zones would be impractical in the rural parts of the county. If school officials should change their minds and decide to try an attendance-area plan in the rural areas, there must, of course, be a survey. If, on the other hand, the board should continue to limit the options of rural students to the nearest formerly white and formerly Negro schools serving their residences, the steps outlined for a free-choice plan in the *Jefferson County* decree must be followed. We stress particularly the transportation provision of that decree. 380 F.2d, at 392.

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* The district court found that a majority of the present geographic zones have both races residing within them. This finding persuades us that if all students attended schools serving their zones, there would be more desegregation than there is. When a further effort is made to devise nonracial zones and to eliminate boundary lines and feeder patterns designed to perpetuate segregation, Mobile may at least achieve a unitary system.

II. *Faculty*

In the last Mobile case, Judge Tuttle said there must "be an end to the present policy of hiring and assigning teachers according to race by the time the last of the schools are fully desegregated for the school year 1967-68." 364 F.2d, at 904. In response to this directive, the board offered to a small group of teachers the option to transfer to a school in which students and teachers of the opposite race predominate. The most recent figures indicate that 12 Negroes have elected to teach in predominantly white schools and 3 whites have elected to teach in predominantly Negro schools. Despite the Court's decree, it seems apparent that the policy of hiring and assigning teachers according to race still exists. In a system having approximately 2700 teachers, the surface of the problem of faculty segregation is hardly scratched by the transfer of 15 teachers to schools of the opposite race. The reason for the lack of progress is that the board has not yet shouldered the burden. While any sound program should encourage voluntary transfers, the responsibility for faculty desegregation, just as the responsibility for student desegregation, lies ultimately with the board, not the teachers. Accordingly, we have entered a decree requiring the board to take positive steps by way of assigning teachers to schools of the opposite race. In the final analysis, the pattern of teacher assignment to a particular school must not be identifiable as tailored for a heavy concentration of either Negro or white students. Our provisions for faculty desegregation follow the ones entered by another panel of this Court in Stell v. Board of Education for the City of Savannah and the County of Chatham, 5th Cir. 1967, 387 F.2d 486.

We enter a decree along these lines because faculty integration has been recognized as the key to integration of all phases of education in a school system. As Judge Wisdom said in *Jefferson County,*

> Yet until school authorities recognize and carry out their affirmative duty to integrate faculties as well as facilities, there is not the slightest possibility of their ever establishing an operative nondiscriminatory school system.

372 F.2d, at 892. He goes on to quote with approval the following statement by the Eighth Circuit in Clark v. Board of Education of the Little Rock School District, 8th Cir. 1966, 369 F.2d 661, 670:

> The lack of a definite program will only result in further delay of long overdue action. We are not content at this late date to approve a desegregation plan that contains only a statement of general good intention. We deem a positive commitment to a reasonable program aimed at ending segregation of the teaching staff to be necessary for the final approval of a constitutionally adequate desegregation plan.

On the whole, the provisions of our decree are designed to effectuate (a) the survey of the system, (b) the establishment of an attendance-area plan with attendance-zone lines drawn on a nonracial basis, and (c) desegregation of faculty. The decree does not concern assignment of students in the rural areas; but we repeat that if there are to be options but no attendance zones, the steps outlined in the *Jefferson County* decree for a free-choice plan must be

followed. Somewhat apart from the general objectives just enumerated, we have also decreed full integration of interschool activities. Although Negroes and whites play together on athletic teams in bi-racial schools, the board acknowledges that all-Negro teams are not scheduled against all-white teams. Such a distinction based on race is no longer tolerable; the integration of activities must be complete. *Jefferson County*, supra, 372 F.2d, at 846, footnote 5.

The judgment of the trial court is reversed and the case is remanded for entry of the decree attached to this opinion.

DECREE

It is ordered, adjudged and decreed that the appellees, their agents, officers, employees and successors and all those in active concert and participation with them be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the Mobile school system. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system. As stated in the opinion of the Court of Appeals, the primary concern is that attendance-zone lines be drawn on a nonracial basis. To this end the board will conduct a survey as more specifically described in Section IV herein.

I.

STUDENT ASSIGNMENT

A. The appellees shall, to the extent feasible, make assignments of students and draw attendance area lines in such a way as to eliminate the effects of past racial deci-

sions in assigning students, drawing attendance lines, and constructing school buildings.

B. Appellees shall arrange for the conspicuous publication of an announcement, giving detailed information as to the name and location of schools to which students have been assigned for the coming school year pursuant to the desegregation plan, in the newspapers most generally circulated in the community between March 1 and March 31 of each year. Publication as a legal notice is not sufficient. Whenever any revision of attendance zones is proposed, appellees shall similarly arrange for the conspicuous publication of an announcement at least 30 days before any change is to become effective, naming each to be affected and describing the proposed new zones. Copies of all material published hereunder must also be given at that time to all television and radio stations serving the community. Copies of this notice and decree shall be posted in each school in the school system and at the office of the Superintendent of Education.

C. A street or road map showing the boundaries of, and the school serving, each attendance zone and a chart showing feeder patterns must be freely available for public inspection at the office of the Superintendent. Each school in the system must have freely available for public inspection a map showing the boundaries of its attendance area, and a chart showing its feeder pattern. A copy of this map and chart shall be given to the Parent Teachers Association at each school.

D. After the attendance areas are redrawn to achieve the desegregation of the system as provided in section IV

of this decree, all students will be required to attend the school serving their zone, absent some compelling nonracial reason.

II.

Construction

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not fail to consolidate schools because desegregation would result.

Until such time as the Court approves a plan based on the survey conducted pursuant to section IV herein, construction shall be suspended for all planned building projects at which actual construction has not been commenced.

Leave to proceed with particular construction projects may be obtained prior to the completion of the survey upon a showing by the appellees to the Court, that particular building projects will not have the effect of perpetuating racial segregation.

III.

Faculty and Staff Assignments

A. *Faculty Employment.* Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting

or correcting the effect of the segregated assignment of faculty and staff in the dual system. Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty. The Board will continue positive and affirmative steps to accomplish the desegregation of its school faculties and to achieve substantial desegregation of faculties in its schools for the 1968-69 school year notwithstanding teacher contracts for 1968-69 may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The appellees shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school.

B. *Dismissals.* Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without con-

sideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

C. *Past Assignments.* The appellees shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual school system.

IV.

Survey

The appellees shall conduct a survey of their school system and report to the Court, by June 1, 1968, the results of such survey, and shall specifically report as follows:

A. The appellees shall prepare a map for each school showing the location, by race and grade, of each student in the school system during the 1967-68 school year.

B. Recommendations for redrawing attendance zone lines to achieve desegregation of the schools.

C. Recommendations for the reorganization of the "feeder" system consistent with the objective of achieving desegregation.

D. A description of each school in the school system to include:

1. The size of each site and whether it is suitable for permanent use, suitable for temporary use, or should be abandoned;

2. The number of buildings on each site and as to each, whether it is suitable for permanent use, suitable for temporary use or should be abandoned;

3. The standards and criteria used to determine whether buildings and sites are suitable for permanent use, suitable for temporary use, or should be abandoned;

4. The number of regular, special and portable classrooms at each school building and the number of square feet in each such classroom;

5. Recommendations for the future use (including grades to be accommodated) of each school building and site for the next ten years, including the need for additional classrooms and the information upon which such recommendations are based.

E. A property inventory to include:

1. A list of all sites currently owned;

2. A list of all sites which the appellees have present plans to acquire and the size and intended use of such sites;

3. The basis for selection of all sites listed under numbers 1 and 2.

F. The status of construction of each school building currently under construction and the status of planning for the use of sites currently owned.

G. A forecast of enrollment at each school for the next ten years and the information upon which such forecast shall be based.

V.

Services, Facilities, Activities and Programs

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, non-racially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the appellees shall be conducted without regard to race or color. Athletic meets and competitions and other activities in which several schools participate shall be arranged so that formerly white and formerly Negro schools participate together.

VI.

Reports

A. On June 10, of each year beginning in 1968, appellees will submit a report to the Court, and serve copies on opposing counsel, showing the number of persons, by school, grade (where appropriate), and race they anticipate will be employed for the fall semester. Within one week after the day classes begin for the fall semester in 1968 and each succeeding year appellees will submit a report to the Court, and serve a copy on opposing counsel, showing the number of teachers actually working at each school by grade (where appropriate) and race. In 1968, a date later than June 10 may be appropriate because of the survey.

B. On the same dates set forth in VI(A) above, reports will be submitted to the Court, and a copy served on opposing counsel, showing the number of students by school, grade, and race, expected and actually enrolled at the schools in Mobile County.

C. Within one week after the opening of each school year, appellees shall submit a report to the Court and serve copies on opposing counsel, showing the number of faculty vacancies, by school, that have occurred or been filled by the appellees since the order of this Court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The

tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

ON PETITION FOR REHEARING

Per Curiam:

Appellee's motion for rehearing in the above styled cases is denied, except that the Decree issued by this Court for entry by the District Court will be modified as follows:

1. Under Section IV-A, appellee will be permitted to consolidate the survey information on two maps—one to cover the urban area and the other the rural area—so long as the information is reported on the consolidated maps in a clear and comprehensible manner. However, the survey must designate students by grade.

2. Under Section IV-C, the date of submission of recommendations for the reorganization of the feeder system of assignments to secondary schools will be postponed from June 1, 1968 to August 1, 1968.

3. Likewise, under Section IV-D-5, the date of submission of recommendations for the future use of all school plants and sites for the next ten years will be postponed from June 1, 1968 to August 1, 1968.

4. Under Section IV-G, the date of submission of the forecast of enrollment at each school for the next ten years will be postponed from June 1, 1968 to December 1, 1968.

District Court Opinion of July 29, 1968

On March 12, 1968, the Fifth Circuit Court of Appeals reversed a prior order of this court in this case and in the reversal opinion included a specific decree to be followed. See *Davis, et al.* v. *Board of School Commissioners*, 393 F2d 690 (1968). This decree was later modified and is set out in the same citation.

Pursuant to said decree, as amended, the Board of School Commissioners of Mobile County filed its survey and suggested area attendance lines with the court on the 7th day of May 1968 and on the 12th day of June 1968, moved the Court to disapprove said area attendance zones and to place the entire school system on freedom of choice.

On the 29th day of May 1968, a petition to intervene was filed by defendant-intervenors representing many parents of students attending the public schools, who join in vigorous opposition to any compulsory zoning plan. On June 17, 1968, plaintiffs filed a memorandum in opposition of motion to intervene. The petition to intervene was granted on June 21, 1968. On July 1, the plaintiffs filed memorandum in opposition to defendants' motion to reject their own zone plans which were filed May 7th. Hearing on the area attendance zones and petition for freedom of choice was set on July 10th but was continued for one week, and hearing was commenced at 9:30 A.M. on the morning of the 17th of July and concluded after six days in court at about 4:20 P.M. on July 24th. During this hearing the plaintiffs introduced their suggested Alternate "B" area attendance zones which were based on a computer analysis made by APT Associates in conjunction with Dr. Myrom Lieber-

man, Professor of Education at Rhode Island College. The Government, plaintiff-intervenor, filed its suggested Alternate "A" attendance area zone plans which were prepared by Mr. Frank Dunbaugh, attorney for plaintiff-intervenor. If there is any one thing on which plaintiffs, plaintiff-intervenor, defendants, and defendant-intervenors agree, it is that no party likes the other parties suggested zones. Dr. Lieberman, who testified at length as an expert, readily stated that he did not have as much information as he would have liked in preparing plaintiffs' suggested Alternate "B" zones and that if he had had more information he could have done a better job, that his zones were not perfect and that a qualified person with more information perhaps could do a better job. Mr. Dunbaugh stated that he prepared Alternate "A" suggested area zones on behalf of the Government and he readily stated that he was not an expert educator, that his zones were not perfect and can doubtless be improved upon in certain areas. The defendant is not satisfied with its own area zones as it asked the Court to disapprove them. These three vastly different zone plans give the Court very little assistance and demonstrate the difficulty in preparing any practical area attendance zones.

All three plans recognize the fact and the Court finds, that due to concentration of races in certain areas, attendance area zones will leave some schools wih one hundred percent white attendance and some with one hundred percent Negro attendance.[1] However, the decree of the Court of Appeals contains an explicit mandate that Mobile metropolitan schools shall be organized into attendance

[1] Plaintiffs' Exhibits 16 and 17, Plaintiff-Intervenor's Exhibit 6 and Defendants' Exhibit 16.

zones on a nonracial basis, and this Court has no discretion to grant the motions for adoption of a purely freedom-of-choice system.

Under certain of the suggested zoning plans, and perhaps all, it would in some instances require children in the system who are scheduled to graduate next year to transfer from the school they have attended and thus spend a single year in a school new to them and separated from familiar surroundings and friends. This has met with much opposition both from students and parents. It seems to the Court that the opposition is justified. Therefore, transfers will be granted to any student who has only one grade remaining in the school he last attended, whether the school is elementary or secondary. This transfer provision is granted to preserve the school-identify relationship which all parties agree is most important to the educational process.

The Court recognizes the fact that its first order in the Birdie Mae Davis case many years ago requiring school integration resulted initially in a low percentage of the minority group attending a school or schools of the opposite race. This percentage has increased as time went on. The plan herein decreed by the Court will increase the percentage of integration substantially, but due to concentration of races in certain areas, it will of necessity in some instances place a very small percentage of minority groups in schools of the opposite race. It seems to be the consensus of educators that this is not a sound educational program for either race. Consequently in the plan herein decreed, in instances which the minority race is less than five percent (5%) of the entire school attendance, such minority students will upon request, and at such time as the

Board may require, be granted transfers to the available school of their choice nearest their residence serving their grade level.

There were several criticisms of the Board's proposed plan in which both the plaintiffs and the plaintiff-intervenor joined, one of which was the closing of Old Shell Road School. Based on the evidence presented in court, together with the Court's knowledge of the Old Shell Road School and its environs, the Court feels that Old Shell Road should not be closed. The Court is cognizant of the fact that it is housed in an old two-story building and that the grounds on which it is situated should be larger for an ideal location. Nevertheless, weighing the age of the school, the fact that it is two-story, the fact that its grounds should be larger, against the many advantages of keeping it open, the Court's plan, by increasing its area attendance zone, requires that it be left open as a school. This thought was concurred in by Dr. Lieberman.

It will be noted in the Court's plan that both Old Shell Road School and Augusta Evans School are in the same area attendance zone. Under the Court's plan, Old Shell Road is to be operated as the elementary school of that zone and Augusta Evans is to be operated for special education classes for the handicapped of the entire system on a completely integrated basis.

Another criticism joined in by both plaintiffs and plaintiff-intervenor, was that of operating Hillsdale Heights as a 1-12 school. The Court feels that this should be changed and that the high school heretofore operated at Hillsdale Heights should be transferred to Shaw High School.

One other area in which the Government criticized the plan proposed by the defendants is that of closing Elli-

cott and keeping Whitley open. Dr. Lieberman placed great importance on the closeness of Whitley to both International Paper Company and Scott Paper Company plants which of necessity create some objectionable features. What Dr. Lieberman is overlooking, is the fact that not only the areas of both of these schools, but the entire Mobile County area is the site of a number of large paper mills, which constitute a major factor in the economy of the area, and around which has grown up housing communities of substantial size. Hence, the main objection expressed by Dr. Lieberman could be stated as to almost any area of metropolitan Mobile, dependent upon the direction of the wind. Those acquainted with and dependent upon the paper making industry, soon adjust themselves to the aroma and realize that its advantages far outweigh its objections.

A comparison of defendants' Exhibits 25 and 26 certainly demonstrate the fact that not only the closing of Whitley would be a mistake but to keep Ellicott open as a school would likewise be a mistake. All parties seem to be in accord that Southside and Barney Schools should be closed. Consequently, the decree provides for the closing of Ellicott, Barney and Southside.

It will be noted from the area attendance zones adopted by the Court that as to the Hall School, there will be in addition to the elementary classes, sufficient room to accommodate special education classes for South Mobile, such as adult basic education and a number of groups with federal reimbursement, in addition to federal programs, including the Head Start Program, as administered by the Community Action Organization.

In drawing the area attendance zones, the Court eliminated any significant amount of bussing students from one area of the city to another area. One area attendance zone will be bussed to Warren Elementary School. This is a temporary measure since the defendants contemplate the construction of an elementary school in this area.

The area attendance zones drawn and adopted by the Court apply only to Elementary and Junior High Schools and are hereto attached and made a part of this opinion. The defendants are directed to have these maps published in a newspaper of general circulation in Mobile County, Alabama, in the afternoon edition of the paper on July 31, 1968, the morning of August 2, and the morning of August 4, 1968. They are further directed to post both the elementary school map and the junior high school zone map in a conspicuous place in each school house in the urban area and in the office of the Superintendent of Education, Yerby Building, 504 Government Street, for public examination. Said maps shall remain posted and available for inspection at the schools and at the School Board Office continuously throughout the school year.

The defendants are further directed to make available to the news media in Mobile County, such information as will enable the public to be fully informed as to the operation of the schools commencing the September 68-69 term pursuant to this decree and order.

SENIOR HIGH SCHOOLS

As to the students who will attend the senior high schools (grades 9 through 12) and those 8th grade students resid-

ing in the Carver and Craighead attendance zones[2] at the beginning of the 68-69 semester, the Court finds that none of the plans suggested are feasible. The Court is further of the opinion that no one at this time, however well versed or experienced, could draw sound attendance area zoning plans for the high schools in the system. On the contrary, the Court finds that imposition of attendance zones for high schools at this time would result in locked-in segregation to a substantially greater degree than will be the case under the freedom-of-choice system. The Court of Appeals recognizes that there may be exceptions to the requirement for zoning for "compelling non-racial reasons" and this Court is compelled to find under the evidence that such reasons exist for deferring the attempt to devise rigid attendance zones for Mobile's high schools for the time being. The zones for elementary and junior high schools as adopted by this Court, no doubt have some imperfections which experience will disclose. The Court feels that the knowledge acquired by the use of the zones adopted by the Court and such facts as will be disclosed from their use is necessary before any practical, workable, attendance zone area can be established for the high school level. Therefore, for the 1968-69 school year the grades specified above in this paragraph in the metropolitan area will operate on a freedom of choice desegregation plan. The Court is of the opinion that such a plan is more feasible at this time than the attendance zones. This conclusion by the Court was

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[2] This deviation from the 9-12 grade structure is necessitated by the absence of a Junior High School in the Craighead and Carver attendance zones.

[3] See footnote number 2.

reached after consideration of all the proposed plans, none of which offer satisfactory workable zones on the secondary level. The Court also considered legitimate local problems which would deter effectual desegregation on an attendance zone plan. *Goss* v. *Board of Education,* 373 U.S. 683, 689 (1963). The Court feels that in the light of the facts disclosed by the evidence, the adoption of freedom of choice to this limited extent, is not in contradiction to the mandate of the Court of Appeals since that Court has expressly affirmed a form of freedom of choice for the rural schools in the Mobile System, in recognition of a number of practical considerations.

The freedom of choice plan for the high schools shall operate on an interim annual basis and its continuance will be totally dependent upon the speed of desegregation in the secondary schools. If at the end of the 1968-69 school year the Court determines that such a plan fails in reaching the desired results, freedom of choice will be abandoned for a more effective plan. *Green* v. *County School Board of New Kent County,* 88 S.Ct. 1689, 391 U.S. 430 (May 27, 1968).

The defendants are ordered to file with the Court on December 16, 1968, a report showing the racial composition of each senior high school and each grade therein. The Court will then determine whether some other plan must be devised for institution at the commencement of the 1969-70 school year.

Attached to and made a part of this opinion is the decree setting out in specific detail the steps which the Court orders the School Board to administer in establishing the freedom of choice plan. This decree was designed after the *Jefferson* decree entered by the Fifth Circuit Court of Appeals on March 29, 1967. 380 F2d 385, 390 (1967).

Due to the time element the decree is somewhat modified to allow the School Board ample opportunity to tabulate and coordinate the results of the choice forms and to implement this plan for the opening of the 68-69 school year.

The six day hearing just concluded in this case attracted wide public interest. For the first few days the courtroom was filled to capacity and crowds standing in front of the Federal Building required the closing of the street. At all other times the courtroom was filled substantially to capacity. The trial was widely publicized by all news media. Due to the time element and in the light of the general public interest displayed during the hearing, and the publication required by this decree, the Court feels that choice forms may be effectively hand distributed from the schools and is therefore not required that the postal service be used. See Section II(f) of the decree hereto attached.

The decree does not contain any provision dealing with desegregation of faculty, new construction, or desegregation of facilities and activities. This Court's order dated May 13, 1968, fully sets forth the obligation of the School Board in these respects and must be implemented for the 1968-69 school year.

DONE in Mobile, Alabama, this 29th day of July 1968.

DANIEL H. THOMAS
Chief Judge
United States District Court
Southern District of Alabama

District Court Opinion of July 29, 1968

DECREE

It is ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees, and successors and all those in active concert and participation with them, be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the school system. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system.

I

DESEGREGATION

Commencing with the 1968-69 school year, the school grades, 1 through 8, with a minor exception,[1] shall operate under area attendance zone desegregation plan. The specific area attendance zones are attached to and made a part of this decree. No alterations or deviations shall be allowed without the expressed approval of the Court. The schools and their grade level which shall operate under area attendance zones for the school term 1968-69, are listed below.

Arlington	Grades 1-5
Austin	Grades 1-6
Bienville	Grades 1-6

[1] The prospective eighth grade students residing in the Carver and Craighead area attendance zones shall exercise a freedom of choice for 1968-69.

Brazier	Grades 1-6
Brookley	Grades 1-6
Caldwell	Grades 1-6
Chicasaw	Grades 1-6
Council	Grades 1-5
Crichton	Grades 1-6
Dickson	Grades 1-6
Dodge	Grades 1-6
Eight Mile	Grades 1-8
Emerson	Grades 1-6
Fonde	Grades 1-6
Fonvielle	Grades 1-6
Forest Hill	Grades 1-5
Glendale	Grades 1-6
Gorgas	Grades 1-6
Grant	Grades 1-6
Hall	Grades 1-6
Hamilton	Grades 1-6
Hillsdale	Grades 1-8
Howard	Grades 1-6
Indian Springs	Grades 1-6
Leinkauf	Grades 1-6
Maryvale	Grades 1-6
Mertz	Grades 1-6
Morningside	Grades 1-6
Old Shell Road	Grades 1-6
Orchard	Grades 1-5
Owens	Grades 1-5
Palmer	Grades 1-5
Robbins	Grades 1-5
Shepard	Grades 1-6
Stanton Road	Grades 1-6

Thomas	Grades 1-6
Warren	Grades 1-6
Westlawn	Grades 1-6
Whistler	Grades 1-6
Whitley	Grades 1-5
Will	Grades 1-5
Williams	Grades 1-6
Woodcock	Grades 1-6
Azalea Road	Grades 7-8
Carver	Grades 6-7
Clark	Grades 7-8
Craighead	Grades 6-7
Dunbar	Grades 7-8
Eanes	Grades 7-8
Phillips	Grades 7-8
Prichard	Grades 6-8
Scarborough	Grades 6-8
Washington	Grades 7-8

II

AREA ATTENDANCE ZONES

The area attendance zones were drawn by the Court on a non-racial basis. The main considerations in drawing the zones were sound educational policies and geographical data of the metropolitan area. The area attendance zones may produce unforeseen educational problems. In such instances, the defendants may file with the Court, with copies to opposing counsel, a petition setting forth specifically the educational defect in the Court's zone or zones. The Court may rule on such petition without a formal evidentiary hearing.

Under the area attendance zones, the following schools are closed for the 1968-69 school year: Southside Junior High, Barney Elementary and Ellicott Elementary.

III

Transfers

Upon request, students may transfer from the school serving their attendance area to the school nearest their residence which serves their grade level, provided space is available, for one of the following reasons:

(a) Transfer shall be granted to a student whose race composes the student minority and such minority is five percent (5%) or less of the entire student enrollment of the school.

(b) Transfer shall be granted to a student who has one grade remaining in the school's grade level which he or she last attended and under the area attendance zone, would be required to attend a different school than the school last attended. The rule of proximity of school to residence shall not apply where the school last attended is not the nearest school to the student's residence.

(c) Transfers shall be granted to a student for good cause, other than (a) and (b) above. Racial matters shall not constitute good cause.

A time period for filing request for transfers shall be established by the defendant as soon as accurate enrollment figures are ascertained.

IV

Public Notice

The defendants shall publish the attendance area zones and the text of this decree in the newspaper of general circulation in Mobile County, Alabama, in the afternoon edition of the paper on July 31, 1968, the morning edition of August 2, 1968, and the morning edition of August 4, 1968. Copies of the attendance area zones and decree shall be posted in a conspicuous place in each elementary and junior high school in the urban system and in the office of the Superintendent of Education for public examination for the entire 1968-69 school term.

The defendants shall make available to the radio and television stations in Mobile County such information as will enable the general public to be fully informed as to the operation of the schools for the 1968-69 school term.

V

Reports

The defendants shall file with the Clerk of this Court and upon opposing counsel, on or before December 31, 1968, a report which shall contain the percentage of integration and the racial composition of each school operating under the area attendance zone plan as of December 16, 1968.

Done in Mobile, Alabama, this 29th day of July 1968.

Daniel H. Thomas
Chief Judge
United States District Court
Southern District of Alabama

DECREE

It is ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees and successors and all those in active concert and participation with them, be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the school ssytem. As set out more particularly in the body of the decree they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system:

I

DESEGREGATION

Commencing with the 1968-69 school year, in accordance with this decree, the schools and their grade level listed below, shall operate on a freedom of choice desegregation plan. All pupils entering the ninth or higher grade and eighth grade students residing in the Craighead and Carver attendance zones, shall exercise their choice of any school in the metropolitan system. Each reference hereafter to schools only means the schools and grades set out below. The provisions of this decree have no application to the desegregation plan of the rural schools of Mobile County.

Schools available to students who will enter the ninth or higher grade for the 1968-69 school year:

B. C. Rain	Grades 9-12
Blount	Grades 8-12
Central	Grades 9-12
Davidson	Grades 9-12

Hillsdale	9th Grade only
K. J. Clark	9th Grade only
Mae Eanes	9th Grade only
Mobile County Training School	Grades 9-12
Murphy	Grades 9-12
Prichard	9th Grade only
Shaw	Grades 9-12
Toulminville	Grades 10-12
Trinity Gardens	Grades 9-12
Vigor	Grades 10-12
Washington	9th Grade only
Williamson	Grades 8-12

Schools available to the students residing in the Craighead and Carver attendance area zones who will enter the eighth grade are:

Azalea Road	8th Grade only
Blount	Grades 8-12
B. C. Rain	Grades 8-12
Dunbar	8th Grade only
Eight Mile	8th Grade only
Hillsdale	Grades 8-9
K. J. Clark	Grades 8-9
Mae Eanes	Grades 8-9
Mobile County Training School	Grades 8-12
Prichard	Grades 8-9
Scarborough	8th Grade only
Sidney Phillips	8th Grade only
Washington	Grades 8-9
Williamson	Grades 8-12

EXERCISE OF CHOICE

(a) *Who May Exercise Choice.* A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he is exercising a choice for the ninth or higher grade. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) All students affected by this decree, both white and Negro shall be required to exercise a free choice of schools for the school year 1968-69.

(c) *Choice Period.* The period of exercising choice shall commence on August 5, 1968, and end August 16, 1968. The date for choice periods for subsequent years will be determined by the Court, dependent upon the continuation of the freedom of choice plan. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) *Mandatory Exercise of Choice.* A failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercise choice before the expiration of the choice period. Any student who has not exercised his

choice of school within a week after school opens shall be assigned to the school nearest his home where space is available under standards for determining available space which shall be applied uniformly throughout the system.

(e) *Public Notice.* The defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. This notice must be published daily for a five day period preceding the choice period. Publication as a legal notice will not be sufficient. The text of the notice shall be substantially similar to the text of the explanatory letter to the parent. Copies of this notice must also be given promptly to all radio and TV stations located in the community. Copies of this decree shall be posted in each school and at the office of the Superintendent of Education.

(f) *Distribution of Explanatory Letters and Choice Forms.* On the first day and each day thereafter of the choice period explanatory letters and choice forms shall be distributed by hand at the schools and at the office of the Superintendent of Education, 504 Government Street. The choice forms and explanatory letter will be available from 7:00 A.M. to 12:00 A.M. and 1:00 P.M. to 5:30 P.M. each day of the choice period excluding Saturday and Sunday. Copies of the explanatory letter and choice forms shall be freely available to parents and students, prospective students and the general public at each school and at the office of the Superintendent of Education.

(g) *Contents of Choice Forms.* Each choice form shall set forth the name and the grades offered at each school

and may require of the person exercising the choice the names, address, age of student, school and grade currently or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent, or where appropriate, the signature of the student, and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, may be required or requested, without approval of the Court.

(h) *Return of Choice Form.* At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any Junior High or Senior High School in the school system or to the office of the Superintendent.

(i) *Choices Not on Official Form.* The exercise of choice may also be made by the submission in like manner or any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

(j) *Choice Forms Binding.* When a choice form has been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices from their children under the conditions set forth in paragraph II(a) of this decree and in exceptional cases where, absent the consideration of race, a change is educationally called for or where compelling hardship is shown by the student. A change in family residence from one neighborhood to another shall be considered an exceptional case for purposes of this paragraph.

(k) *Preference in Assignment.* In assigning students to schools, no preferences shall be given to any student for prior attendance at a school, except when necessary, preference shall be given to students who choose to attend their previous school of attendance and have only one year remaining before completion of that school's grade level, and except with the approval of court in extraordinary circumstances, no choice shall be denied for any reason other than overcrowding. In the case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding shall be applied uniformly throughout the system.

(l) *Second Choice Where First Choice is Denied.* Any student whose choice is denied must be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student shall have seven days from the receipt of notice of a denial of first choice in which to exercise a second choice.

(m) *Transportation.* Where transportation is generally provided, buses must be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing either the formerly predominantly white or the formerly predominantly Negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under gen-

erally applicable transportation rules and the School Board's transportation policy.

(n) *Officials Not to Influence Choice.* At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice or favor or penalize any person because of a choice made. If the defendant school board employs professional guidance counselors, such persons shall base their guidance and counselling on the individual student's particular personal, academic, and vocational needs. Such guidance and counselling by teachers as well as professional guidance counselors shall be available to all students without regard to race or color.

(o) *Protection of Persons Exercising Choice.* Within their authority school officials are responsible for the protection of persons exercising rights under or otherwise effected by this decree. They shall, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference shall include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board shall not publish, allow, or cause to be published, the names or addresses of pupils exercising rights or otherwise effected by this decree. If officials of the school system are not able to provide sufficient protection, they shall seek whatever assistance is necessary from other appropriate officials.

III

Prospective Students

Each prospective new student shall be required to exercise a choice of schools before or at the time of enrollment. All such students known to defendants shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Where there is no pre-registration procedure for newly entering students, copies of the choice forms shall be available at the office of the Superintendent and at each school during the time the school is usually open.

IV

Transfers

(a) *Transfers for Students.* Any student shall have the right at the beginning of a new term, to transfer to any school from which he was excluded or would otherwise be excluded on account of his race or color.

(b) *Transfers for Special Needs.* Any student who requires a course of study not offered at the school to which he has been assigned may be permitted, upon his written application at the beginning of any school term or semester, to transfer to another school which offers courses for his special needs.

(c) *Transfers to Special Classes or Schools.* If the defendants operate and maintain special classes or schools for physically handicapped, mentally retarded, or gifted

children, the defendants may assign children to such schools or classes on a basis related to the function of the special class or school that is other than freedom of choice. In no event shall such assignments be made on the basis of race or color or in a manner which tends to perpetuate a dual school system based on race or color.

V

Report to the Court

The defendants shall serve upon the opposing parties and file with the Clerk of the Court, on or before December 16, 1968, a report tabulating by race the number of choice applications received for enrollment in each grade in each school in the system operating under the freedom of choice plan, and the number of choices and transfers granted and the number of denials in each grade of each school. The report shall also state any reasons relied upon in denying choice and shall tabulate by school and by race of student, the number of choices and transfers denied for each such reason.

The defendants shall in addition to the above information, report the racial composition of each grade (9-12) in each school operating under the freedom of choice plan, plus the name, address, and the name of school attended by the eighth grade students who exercised freedom of choice.

Done in Mobile, Alabama, the 29th day of July 1968.

Daniel H. Thomas
Chief Judge
United States District Court
Southern District of Alabama

District Court Opinion of July 29, 1968

MOBILE COUNTY PUBLIC SCHOOL SYSTEM
504 GOVERNMENT STREET

Dear Parent:

Every student who will be entering the ninth or higher grade, and those students who reside in the Carver and Craighead attendance zone area who will be entering the eighth grade, for the upcoming school year may choose to attend any school in our system.

It does not matter which school your child attended last year. You and your child may select any school listed on the attached choice form which serves your child's grade level. It does not matter if the school you choose was formerly predominantly white or Negro. A child enrolling in the school system for the first time *must* make a choice of schools before, or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by August 16, 1968. You may mail it, deliver it by messenger, or by hand, to any school on the list or to the Office of the Superintendent of Education at any time between August 5, 1968, and August 16, 1968. No one may require you to return your choice form before August 16, 1968, and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely yours,

Superintendent

Enc:

CHOICE FORM

All students who will be entering the Ninth or higher grade and students who will be entering the Eighth grade who reside in the Carver and Craighead attendance zone areas, are eligible to choose any school he or she wishes to enter for the 1968-69 school term which offers the grade level to which he is eligible to enter. The names and grade levels of the available schools are listed below. Each student shall have a freedom of choice of the school he or she wishes to attend, without regard to the school attended last year, or whether or not the school he chooses was formerly or predominantly white or Negro. You have 12 days to make your choice. Each student must make a choice.

This form is for your use in making your choice and must be mailed or brought to the principal of any school listed below, or to the office of the Superintendent, located at 504 Government Street, by August 16, 1968.

District Court Opinion of July 29, 1968

Name of child .....
(Last) (First) (Middle)

Address .....

Name of Parent or other
adult serving as parent .....

Grade child is entering .....

School attended last year .....

For students entering the Ninth or higher grade the following schools and the grades they offer are set out below. Please check the school your child wishes to attend commencing the 1968-69 term.

.....B. C. Rain
(Grades 9-12)
.....Blount
(Grades 9-12)
.....Central
(Grades 9-12)
.....Davidson
(Grades 9-12)
.....Hillsdale
(9th grade only)
.....K. J. Clark
(9th grade only)
.....Mae Eanes
(9th grade only)
.....Mobile County
Training School
(Grades 9-12)
.....Murphy
(Grades 9-12)
.....Prichard
(9th grade only)
.....Shaw
(Grades 9-12)
.....Toulminville
(Grades 10-12)
.....Trinity Gardens
(Grades 9-12)
.....Vigor
(Grades 10-12)
.....Washington
(9th grade only)
.....Williamson
(Grades 9-12)

Schools available to the students residing in the Craighead and Carver attendance zone areas who will enter the Eighth grade are listed below. Please check the school your child wishes to attend commencing the 1968-69 term.

.....Azalae Road
.....Blount
.....B. C. Rain
.....Dunbar
.....Eight Mile
.....Hillsdale
.....K. J. Clark
.....Mae Eanes
.....Mobile County Training School
.....Prichard
.....Scarborough
.....Sidney Phillips
.....Washington
.....Williamson

District Court Order of August 2, 1968

On July 31, 1968, the plaintiff-intervenor United States filed a motion for modification of this Court's order dated July 29, 1968, and after consideration thereof, it appears to the Court that its order dated the 29th day of July 1968, does require modification and amendment thereof.

It is ORDERED, ADJUDGED and DECREED that the first portion of this Court's decree of July 29, 1968, is hereby modified and amended in the following respects:

1. The list of schools contained in Section I is amended to show the Owens School as serving Grades 1-6, to add the Mobile County Training School, which will serve Grades 6-8 and to add the Rain and Trinity Gardens Schools, which will serve Grades 7-8.

It is further ORDERED, ADJUDGED and DECREED that the second portion of this Court's decree of July 29, 1968, is hereby modified in the following respects:

1. By Striking Section V. entitled "REPORTS" and insert the following:

V.

SURVEYS

The defendant school board shall continue its survey for the purpose of obtaining sufficient data for future planning. Specifically, the defendants shall take the following steps:

(a) *Building and Sites* - A survey shall be made of all school buildings and all school sites. Based upon this survey the defendant superintendent shall prepare a detailed

report which shall be filed with the court and served upon each party no later than December 16, 1968. With respect to each site, this report shall include a detailed statement concerning its suitability, the feasibility of improving or expanding the site, a description of the building located on the sites, the suitability of each building, particularly with respect to fire hazards, construction defects, etc. and all other information necessary to a determination of the appropriate uses that could be made of the sites and buildings. This report shall also include the superintendent's recommendation with respect to the grades to be served at each site for the 1969-70 school year and his evaluation or alternative uses.

(b) *Student Census* - A student census, by race and grade, shall be conducted at the beginning of the 1968-69 school year for the metropolitan system. The defendant superintendent shall file with the court and serve upon each party no later than December 16, 1968, appropriate maps reflecting the results of the student census.

(c) *Long Range Plans* - On or before October 25, 1968, the defendant superintendent shall file with the court and serve upon each party an interim report with respect to that portion of the survey called for in paragraph IV.D.5 and IV.G. of this Court's order of May 13, 1968.

VI.

Reports

On the dates specified the defendant superintendent shall file with the Court and serve upon each party the following reports:

(a) *Enrollment* - On or before November 1, 1968, a report shall be submitted showing the number of students by school, grade and race actually enrolled at the school in Mobile County. The report shall also contain the racial composition of each school operating under the freedom of choice desegregation plan.

(b) *Faculty* - The report which under paragraph VI.A. of this Court's decree of May 13, 1968, was to be submitted on June 10, 1968. The defendants shall file with the Court and the opposing parties a progress report on the faculty on or before August 16, 1968, and a final report on September 16, 1968.

VII.

Recommendations for 1969-70 School Year

On or before December 31, 1968, the defendant school board shall submit to this Court and serve upon each party, maps containing proposed area attendance lines for use commencing with the 1969-70 school year and a statistical table showing the forecasted enrollment by race and grade for each school. These proposed attendance zones shall include all schools and grades in the metropolitan system, including the high schools.

In drawing the area attendance zones for 1969-70, the Court orders the defendant to draw the zones from the standpoint of achieving a uniform grade structure throughout the system. The Court recognizes that the transition from one grade structure to another may require more than one school term. Nevertheless, the Court directs the defen-

dant to act with the greatest expediency in achieving the maximum degree of uniformity possible for the 1969-70 school year.

As a further recommendation for the 1969-70 school year, the defendant is directed to program those school areas where "locked-in" segregation exists, to achieve the best utilization of the school facilities from an educational point of view, but in accordance with the provisions of this decree.

In its motion for modification, the plaintiff-intervenor United States moves the Court to adopt a pure freedom of choice for the rural schools for Mobile County. Pursuant to the mandate of the Fifth Circuit Court of Appeals and the motion of the United States of America, the Court adopts the freedom of choice desegregation plan for the rural schools in accordance with the following provisions.

Rural Schools

All students in the rural portion of the Mobile County school system shall be assigned to the schools in accordance with the provisions of the section of the decree entitled "Exercise of Choice," which shall be modified by the insertion of the Roman numeral II before the caption and which shall be amended for the rural schools only in the following respects:

II

Exercise of Choice

1. Subsection (c) shall be amended as follows: The period of exercising choice shall commence on August 19, 1968, and end on August 30, 1968.

2. Subsection (m) shall be amended by adding to the last sentence of the section: The policy of the defendant in regard to transportation in the rural areas is that transportation shall be provided if reasonably possible.

Except where the metropolitan system is specifically designated, all provisions of the decree entitled "Exercise of Choice" with the above amendments, shall apply to the rural schools in Mobile County.

Copies of the explanatory letter and the choice form are attached and made a part of this order.

DONE in Mobile, Alabama, this the 2nd day of August 1968.

DANIEL H. THOMAS
Chief Judge
United States District Court
Southern District of Alabama

EXPLANATORY LETTER

Dear Parent:

All schools and grades in our rural school system will operate on the freedom of choice desegregation plan for the upcoming school year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child attended this year. You and your child may select any school you wish.

Every student white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade,

he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of this enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by August 30, 1968. You may mail it or deliver it by messenger or by hand to any school principal in the schools listed on the choice form or to the Office of the Superintendent, 504 Government Street, at any time between August 19, 1968, and August 30, 1968. No one may require you to return your choice form before August 30, 1968, and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other persons because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen.

Your school board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Yours very truly,

Superintendent

Enc.

District Court Order of August 2, 1968

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 12 days to make your choice. It does not matter which school your child attended last year, and it does not matter whether the school you choose was formerly a white or Negro school. This form must be mailed or brought to the principal of any school listed below or to the Office of the Superintendent, 504 Government Street, by August 30, 1968. A choice is required for each child.

Name of child .....
(last) (first) (middle)

Address .....

Name of Parent or other
adult serving as parent .....

If child is entering first grade,
date of birth: .....
(Month) (Day) (Year)

School attended last year .....

Choose one of the following schools by marking an X beside the name:

.....Nelson Adams	Grades 1-12
.....Alba	Grades 1-12
.....Baker	Grades 1-12
.....Belsaw	Grades 1-8
.....Burroughs	Grades 1-6

.....Calcedeaver	Grades 1-12
.....Calvert	Grades 1-6
.....Citronelle	Grades 1-12
.....Dauphin Island	Grades 1-6
.....Davis	Grades 1-6
.....Dawes Union	Grades 1-6
.....Dixon	Grades 1-6
.....Griggs	Grades 1-6
.....Hollinger's Island	Grades 1-8
.....Robert E. Lee	Grades 1-6
.....Lott	Grades 1-12
.....Mobile County High	Grades 7-12
.....Mt. Vernon	Grades 1-8
.....St. Elmo	Grades 7-12
.....Saraland	Grades 1-6
.....Satsuma	Grades 7-12
.....Semmes	Grades 1-8
.....Tanner Williams	Grades 1-6
.....Wilmer	Grades 1-6

Signature .....

Date .....

To be filled in by Superintendent:

School Assigned .....

District Court Order of December 20, 1968

Pursuant to this Court's order and the mandate of the Fifth Circuit Court of Appeals, the defendant-School Board seeks the Court's approval for proposed building expansion for two existing school sites. The applications were filed on February 20, 1968 and April 22, 1968, respectively. The plaintiff and plaintiff-intervenor objected to the proposed construction and requested a special setting to determine if the plans were in compliance with the orders of this Court. This Court granted the request and this matter came on for hearing on the 7th day of May 1968.

At the hearing, the defendants offered evidence to prove that the existing facilities at the Howard Elementary School and the Toulminville High School were inadequate and outdated for present and future needs. The defendant showed that projected enrollment figures require additional and modern facilities. The Government and the plaintiff asserted that the new construction was racially motivated and would tend to promote segregation of the races in the particular school areas.

Now after consideration thereof,

The Court finds that the proposed expansion for the Howard Elementary School is indeed necessary and finds that such construction would not perpetuate segregation within the Howard area particularly when the proposed urban renewal plans of the City are taken into consideration. The Court hereby approves and authorizes the proposed Howard construction plans. The Court does find that the proposed construction in the Toulminville High School area would tend to serve a school area with one dominant

race, thus creating a "locked-in" segregation area, which this Court's order of July 29, 1968, expressly denounced.

Therefore, it is ORDERED, ADJUDGED and DECREED that the defendant's application for new construction in the Howard Elementary School is hereby GRANTED.

It is further ORDERED by the Court that the defendant's application for new construction for the Toulminville High School is hereby DENIED.

DONE this the 20th day of December 1968.

DANIEL H. THOMAS
United States District Judge

District Court Order of March 14, 1969

This matter comes before the Court on the motion of the defendant-school board requesting the Court to reconsider its order of December 20, 1968, in which the Court denied the school board's application for new construction for the Toulminville High School. The matter was set down for rehearing on March 7, 1969, and now after consideration thereof,

The Court finds that the proposed school for the Toulminville area will be located in the most logical, rational and economical site available. It is not disputed that the new school is necessary. The property has been acquired; the school will be centrally located; the site is convenient to traffic and bus routes; and the adjacent facilities (public library and playground) will contribute to the educational program.

The only objection of the plaintiffs and the plaintiff-intervenor is that the new school may be totally or at least predominantly Negro when completed. Such objection has as a premise, the supposition that the School Board will disregard its affirmative duty to disestablish the dual school system. The Court finds such a supposition faulty.

To deny new construction of the Toulminville High School at this time, in the opinion of the Court, would be inconsistent with proper operation of the school system as a whole.

Therefore, it is ORDERED, ADJUDGED and DECREED by the Court that the defendant school board's motion for reconsideration is GRANTED.

District Court Order of March 14, 1969

It is further ORDERED, ADJUDGED and DECREED by the Court that the application for new construction of the Toulminville High School is hereby GRANTED.

DONE at Mobile, Alabama, this the 14th day of March 1969.

DANIEL H. THOMAS
United States District Judge

Court of Appeals Order of March 20, 1969

Before BELL, GODBOLD and DYER, *Circuit Judges.*

By the Court:

IT IS ORDERED AS FOLLOWS:

Appellants' motions for injunction pending appeal, filed in the above causes, are hereby DENIED.

Appellants' motions for consolidation of the above appeals with Cause No. 26886, United States of America, Et Al v. Board of School Commissioners of Mobile County, Et Al, are hereby GRANTED.

The appellees shall give 30 days written notice to appellants before putting out for bids the construction of the proposed Howard School and the proposed Toulminville School.

The Clerk shall set a briefing schedule for the filing of briefs in the above causes which shall not extend or delay the hearing of the causes as consolidated with No. 26886.

District Court Order of April 7, 1969

On July 29, 1968, with an amendment on August 2, 1968, the Court entered a decree for the operation of the Mobile County Public School System for the school year, 1968-1969. The decree ordered the adoption of the freedom of choice desegregation plan for certain grades within the city system and all schools and grades within the county system. The grades not designated for freedom of choice within the city system were to operate under the area attendance zone desegregation plan, with the particular zones being drawn by the Court.

In the decree, the Court stated that the freedom of choice plan was to operate on an annual interim basis and that the attendance zones were subject to revision for subsequent years. The continuance of the plans was dependent upon the desegregation results.

In December 1968, pursuant to this Court's direction, the defendant-School Board filed certain reports stating the enrollment and racial composition of each school in the system. The reports reflect that meaningful desegregation has been accomplished and the effects of the once existent "dual school system" are being permanently disestablished. The Board also filed with the Court and upon opposing parties, maps illustrating the proposed area attendance zones for the school year 1969-70.

Now after consideration thereof and pursuant to this Court's continuing jurisdiction over the desegregation process of the Mobile County Public School System, the Court enters the following decree for the operation of the public schools for the school term, 1969-70.

District Court Order of April 7, 1969

DECREE

It is ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees and successors and all those in active concert and participation with them, be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the school system. As set out more particularly in the body of the decree they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system.

It is further ORDERED, ADJUDGED and DECREED by the Court that all rural schools and those grades and schools, as specified in this Court's decree of July 29, 1968, and amendment of August 2, 1968, shall continue to operate under the freedom of choice desegregation plan for the school year 1969-70.

Choice Period: The period for exercising choice shall commence on Monday, April 14, 1969, and end on Monday, May 12, 1969. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

Distribution of Explanatory Letters and Choice Forms: On the first day and each day thereafter of the choice period, explanatory letters and choice forms shall be distributed by hand at the schools during regular school hours, 8:00 A.M. to 3:30 P.M. and at the office of the Superintendent of Education, 504 Government Street, during regular office hours, 8:00 A.M. to 4:30 P.M. In addition, the

choice forms and explanatory letter shall be hand distributed at the schools to all students who are eligible to make a choice for the 1969-70 school year during the first week of the choice period. The choice forms and explanatory letters shall be identical in form and substance as ordered by the Court in July 1968, except for necessary changes.

With the exception of Section V, styled "Surveys", all sections of the July 29, 1968, and August 2, 1968, decree pertaining to the operation of the freedom of choice desegregation plan shall remain in full force and effect for the school year, 1969-70. Such provisions include, but not limited to, publication, transfers, reports and assignment of students.

It is further ORDERED, ADJUDGED and DECREED by the Court that the area attendance zones as proposed by the School Board for the elementary and junior high grades within the city system, are hereby approved and adopted for the school year 1969-70.

All provisions of this Court's July 29, 1968, and August 2, 1968, decree pertaining to the area attendance zone desegregation plan shall remain in full force and effect for the 1969-70 school term. Such provisions include, but not limited to, publication, transfers and reports.

DONE at Mobile, Alabama, this the 7th day of April 1969.

DANIEL H. THOMAS
United States District Judge

Court of Appeals Order of May 6, 1969

Before BELL, GODBOLD and DYER, *Circuit Judges.*

By the Court:

IT IS ORDERED that appellant's motion for reconsideration of that portion of this Court's order of March 20, 1969, denying appellants' motions for injunction pending appeal in the above entitled and numbered causes be, and the same is hereby GRANTED, and appellants' motions for injunction pending appeal are GRANTED.

(Original filed May 6, 1969)

Court of Appeals Opinion of June 3, 1969

Before JOHN R. BROWN, *Chief Judge,* DYER, *Circuit Judge,* and HUNTER, *District Judge.*

Per Curiam:

In No. 26,886 the District Court on July 29, 1968, entered an order formulating attendance zone lines for grades 1-8 in the city portion of the Mobile School System, adopted freedom of choice in the high school system, permitted transfer from a school into which a student was zoned if the student was in a racial minority of less than five per-cent, and continued a freedom of choice plan in the rural areas.

In Nos. 27,260 and 27,491 the District Court on December 20, 1968, and March 14, 1969, approved construction plans for the Howard and Toulminville schools respectively.

We consolidated and expedited these appeals for oral argument.

It is apparent that the District Court relied wholly upon and gave literal interpretation to the directive in our decision of March 12, 1968, 5 Cir., 393 F.2d 690, that new attendance zones be drawn on a non-racial basis and ignored the unequivocal directive to make a conscious effort in locating attendance zones to desegregate and eliminate past segregation. The record shows and the statistics prove that the attendance zones formulated by the District Court are constitutionally insufficient and unacceptable, and such zones must be redrawn.

In approving a freedom of choice plan for high school students the District Court failed to follow the mandate in our opinion that no distinction was to be drawn between

elementary and high school students with respect to attendance zones, and that the same principles were to govern the assignment of students to secondary as to primary schools.

[1] A provision permitting transfers from racial majority to racial minority schools is entirely proper and should be included in a plan.

[2] The converse, transfers from racial minority to racial majority schools, permitted by the District Court, even when restricted to those instances when the racial minority is 5% or less, is erroneous. This is tantamount to an authorization to white students to resegregate and is impermissible as a means for the perpetration of segregation. Monroe v. Board of Commissioners, 1968, 391 U.S. 450, 88 S.Ct. 1700, 20 L.Ed.2d 733; Goss v. Board of Education, 1963, 373 U.S. 683, 83 S.Ct. 1405, 10 L.Ed.2d 632.

[3] The freedom of choice plan for the rural schools approved by the District Court has singularly failed. Only about 6% of the rural Negro school population in Mobile County chose to attend traditionally white schools and no white children chose to attend traditionally Negro schools. Green v. County School Board, 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716, makes it clear that freedom of choice was an impermissible desegregation plan here.

[4] With respect to the construction of new facilities in the Howard and Toulminville sites, whether these schools should be built as presently proposed, abandoned, or the location changed will largely depend on what the student demands will be after new attendance zones are established to eliminate past segregation. Until new attendance zones are formulated in accordance with this order, the order of

this court enjoining the construction of the Howard school and the Toulminville project will be continued in effect.

> Actually, the formulation of appropriate decrees in the cases before the Court present few, if any, justiciable issues of constitutional import. Such issues have been largely resolved. The difficulties involved in developing a proper decree concern basically practical operational questions and matters of educational administration. H.E.W., with its staff of trained educational experts "with their day to day experience with thousands of school systems", is far better qualified to deal with such operational and administrative problems than the Courts presided over by Judges, who, as one Court has phrased it, "do not have sufficient competence—they are not educators or school administrators—to know the right questions, much less the right answers." United States v. Jefferson County Board of Education, 5th Cir. 1966, 372 F.2d 836, 855; • • •.

Whittenberg v. Greenville County School District, etc. (D.S.C. March 31, 1969), 298 F.Supp. 784, 789, 790.

The orders of the District Court are reversed and the cases are remanded to the District Court with the following instructions:

1. This case shall receive the highest priority.

2. The District Court shall forthwith request the Office of Education of the United States Department of Health, Education and Welfare to collaborate with the Board of School Commissioners of Mobile County in the preparation

of a plan to fully and affirmatively desegregate all public schools in Mobile County, urban and rural, together with comprehensive recommendations for locating and designing new schools, and expanding and consolidating existing schools to assist in eradicating past discrimination and effecting desegregation. The District Court shall further require the School Board to make available to the Office of Education or its designees all requested information relating to the operation of the school district.

3. Proceed according to an expedited time schedule for the submission, review and approval of the plan, as follows:

(a) The board shall within 30 days of this order develop, in conjunction with the experts of the Office of Health, Education and Welfare, an acceptable plan of operation, conformable to the constitutional rights of the Negro students as we have delineated in this opinion.

(b) If such plan is agreed upon by the school board and the Office of Education within the time fixed, the Court will approve such plan, unless the plaintiffs within ten days make proper showing that the plan does not meet constitutional standards.

(c) If no such agreed plan is developed within 30 days, the Office of Education is requested to submit within 10 days its recommendation of a plan for the school district.

(d) The parties shall have ten days from the date a plan is filed with the District Court to file objections or suggested amendments thereto.

(e) For plans as to which objections are made or amendments suggested, or which in any event the District Court will not approve without hearing, the District Court shall commence hearings beginning no later than ten days after the time for filing objections has expired.

(f) A new plan for the district effective for the beginning of the 1969-70 school term shall be completed and approved by the District Court no later than August 1, 1969.

(g) The recommendations as to new construction shall be submitted to the District Court within 120 days of this order.

Because of the urgency of formulating and approving plans to be effective for the 1969-70 school term it is ordered as follows: The mandate of this court shall issue immediately and will not be stayed pending petitions for rehearing or certiorari. This court will not extend the time for filing petitions for rehearing or briefs in support of or in opposition thereto. Any appeals from orders or decrees of the District Court on remand shall be expedited. The record on appeal shall be lodged with this court and appellants' brief filed, all within ten days of the date of the order or decree of the district court from which the appeal is taken. Appellee's brief shall be due ten days thereafter. The court will determine the time and place for oral argument if allowed.

Reversed and remanded with directions.

Court of Appeals Opinion of June 3, 1969

HUNTER, *District Judge* (concurring):

In my judgment "non racial zoning" coupled with a majority to minority transfer provision would best serve the interests of all the school children in metropolitan Mobile. However, this court in its opinion of March 12, 1968, added a *caveat* to its instructions that attendance zones be based on objective criteria (393 F.2d at 694):

> "* * * conscious effort should be made to move boundary lines and change feeder patterns which tend to preserve segregation."

This is the law of the case and is consistent with recent decisions of the Fifth Circuit. United States v. Greenwood Municipal Separate District, 406 F.2d 1086 (5 Cir. Feb. 1969).

Students in the rural portion of the system have been assigned to schools on the basis of freedom of choice. In 29 consolidated cases involving factual settings very similar, I have held that Jefferson-type freedom of choice in Louisiana School Districts "had real prospects of dismantling the dual system at the earliest practicable date" and that this was the best method available to do the job. Conley v. Lake Charles Sch. Bd., W.D.La. 1968, 293 F.Supp. 84. These cases have been reversed. Hall et al. v. St. Helena Parish School Board, Nos. 26450 and 27303, May 28, 1969. There can be no doubt that Hall, supra, requires a holding here that as now constituted, administered and operating in the Mobile Public School System, freedom of choice is not effectual.

Court of Appeals Opinion of June 3, 1969

ON PETITION FOR REHEARING

Per Curiam:

It is ordered that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied, and the motion of appellees for a stay of execution and enforcement of the judgment is denied.

HUNTER, *District Judge:*

Under the total circumstances I would grant the petition for rehearing.

Plan Submitted by the Board of School Commissioners of Mobile County on August 19, 1963

This plan for the beginning of desegregation of the schools of Mobile County is submitted pursuant to the order of the court entered July 11, 1963 as amended July 26, 1963. Said order contains a preliminary injunction requiring the beginning of desegregation by order of the United States Court of Appeals for the Fifth Circuit pending trial of the case and final decree.

The plan is presented after full consideration by the Board and in the light of the following facts, among others:

A. The Board is in the midst of an accelerated building program designed to remove the necessity of half day sessions and provide adequate housing for more than 75,000 pupils of grades 1-12 and to cope with a continuing annual pupil load increase of approximately 3,000 pupils.

B. The residential pattern is continually being reshaped, causing major changes in neighborhood patterns. These patterns are being further altered by the construction of new thoroughfares, I-65 and I-10, through the community, displacing between 1200 and 2000 residences; and

C. These changes have brought about the transfer of students within the system, the admission of new students, and the withdrawal of old students, and have created a major problem for the Mobile School System both within the central office of the Superintendent's staff and at the offices of the respective principals of the 89 local schools; and

Plan Submitted by the Board of School Commissioners of Mobile County on August 19, 1963

D. The Board considers that any general or arbitrary reassignment of pupils presently in attendance at the 89 existing schools, according to any rigid rule of proximity to school or solely by request on the part of the parents of pupils, would be impractical and a disservice to the system, to the local schools, and to the pupils being transferred; such transfers would tend to overload some schools and leave other facilities in less than full use and at the same time result in an unbalanced teacher-pupil ratio throughout the system; and

E. The estimated enrollments for September, 1963 were developed last February and building and classroom capacity has been adjusted thereto; school supplies, textbooks, and other materials and equipment have been allocated accordingly; schools have been staffed and teachers assigned on the same estimated enrollments; and

F. Portable classrooms, half day sessions, makeshift rooms, and other emergency measures have been utilized as means of coping with the current pupil overload in the Mobile Public Schools, toward the end of providing seating space for the 75,000 pupils of 1962-63 and an estimated additional 3,000 pupils for September of 1963-64. These facts lead to the conclusion that great caution in continuous, system-wide study of facilities available, as well as other factors relating to educational policies governing admissions, transfers, and placement of pupils as are set forth in this document, is vitally essential to orderly procedures; and

Plan Submitted by the Board of School Commissioners of Mobile County on August 19, 1963

G. The problems in connection with any desegregation of the schools outside the corporate limits of the City of Mobile are substantially different from the problems involved for desegregation within the City of Mobile and this plan is confined in its first year of operation to schools within the corporate limits of Mobile.

H. The number of pupils both white and negro in the first grade of schools in the City of Mobile for the year beginning in September 1963 will be approximately 8025 and the number in the 12th grade in the city schools will be 3836.

I. The school year 1963-64 begins on September 4, 1963.

J. In the judgment of the Board it is not practicable, on account of the short space of time remaining, to consider individual applications in behalf of negro pupils for assignment or transfer to schools which have been attended only by pupils of the white race except applications pertaining to one grade only, for the school year commencing September 4, 1963; and

It is the judgment of the School Board that it is for the best interests of the pupils of all grades and the orderly and efficient operation of the Mobile School system that the 12th grade be selected as the grade for the processing of such transfers for the school year 1963-64 and that transfers and assignments pertaining to any other grade cannot as a practical matter be granted for the term commencing in September, 1963.

Plan Submitted by the Board of School Commissioners of Mobile County on August 19, 1963

The Board, therefore, proposes the following plan, pursuant to the said order of the Court:

(1) *Assignments:* All existing school assignments shall continue without change except when transfers are authorized by the Assistant Superintendent in Charge of Pupil Personnel under the provisions of this plan. Pupils entering the first grade, when the plan shall have become applicable thereto, and pupils otherwise entering the school system for the first time, when the plan shall have become applicable to the grade entered, shall be assigned without regard to race, as is provided hereinafter.

(2) *Transfers:*

(A) Parents or guardians of pupils in grades to which this plan shall have become applicable, wishing school assignment for the pupils other than as previously assigned or as pre-registered, may make application to that end between April 1 and April 15 of each year for transfer for the next succeeding school year. After 1963, such period shall replace the normal July 31st cut-off date for transfer applications of former years.

(B) Designation of Assistant Superintendent: In the assignment, transfer or continuance of pupils to specific schools, subject to the supervision and review by the Superintendent and Board, the Assistant Superintendent in charge of Pupil Personnel shall be charged with the responsibility for and the assignment of pupil admission by transfer and by original enrollment.

Plan Submitted by the Board of School Commissioners of Mobile County on August 19, 1963

(C) Transfer Requests: Applications for transfer or initial assignment shall be in writing on forms prescribed and supplied by the Board. The proper forms will be furnished to parents of pupils on request. Separate Applications must be filed for each pupil for whom an assignment or transfer is requested.

(D) Pupil Placement Act Criteria Used: For the grade or grades as to which this plan is effective, race or color of the pupil shall not be a factor in assignment or the granting of transfer, but the following criteria shall be considered in making the assignment or granting the requested transfer, along with other relevant factors: (a) available room at the school to which transfer or assignment is requested; (b) the availability of transportation facilities; (c) suitability of established curricula for particular pupils; (d) the choice and interests of the pupil; (e) the request or consent of parents or guardians and the reasons assigned therefor; (f) the effect of the admission of new pupils upon established or proposed academic programs; (g) the adequacy of the pupil's academic preparation for admission to a particular school and curriculum; (h) the scholastic aptitude and relative intelligence, or mental energy or ability of the pupil; (i) the psychological qualification of the pupil for the type of teaching and associations involved; (j) the effect of admission of the pupil upon the academic progress of other students in a particular school or facility thereof; (k) the effect of admission upon prevailing academic standards at a particular school;

(l) the possibility or threat of friction or disorder among pupils or others; (m) the psychological effect upon the pupils in attendance at a particular school; (n) the possibility of breaches of the peace or ill will or economic retaliation within the community; (o) the home environment of the pupil; (p) the maintenance or severance of established social and psychological relationships with other pupils and with teachers; (q) the morals, conduct, health and personal standards of the pupil.

(E) *Tests and Interviews*: The Assistant Superintendent in Charge of Pupil Personnel may require interviews with the parents or guardian and the pupil, with the parents or guardian, or with other persons. He may conduct or authorize such examinations or tests and other investigations as he deems appropriate. In the absence of excuses satisfactory to the Pupil Personnel Office, failure to appear for any requested examination, test, or interview by the pupil or parents or guardian, will be deemed a withdrawal of the application.

(F) *Notice of Action Taken*: Notice of the action taken by the Assistant Superintendent in Charge of Pupil Personnel on each application will be made on or before June 15. For the school year 1963-64 the notice of action taken by the Assistant Superintendent will be made on or before September 3. Such action shall be final, unless a Board hearing is requested in writing within ten days from the date when the notice of action taken on the transfer request is mailed.

Plan Submitted by the Board of School Commissioners of Mobile County on August 19, 1963

(G) *Review*: If a hearing is requested by the parents or guardian or the Board feels a need for a hearing, such a hearing shall allow for a minimum of ten days notice, but will be held within twenty days. Failure of parents or guardians to appear, with the pupil, at the hearing will be deemed a withdrawal of the application. Hearings may be conducted by the Board as a whole, or the Board may designate not less than three Board members to conduct the hearing. In either case, the majority decision of the Board or the committee of the Board will be deemed a final decision. The Board may designate a Board member or other competent representative to conduct such a hearing, take testimony, and report evidence with his recommendation to the Board within fifteen days following the hearing. The Board's decision after a hearing, report of evidence, and recommendation will be deemed final. The Board shall be authorized to investigate objections or problems relating to the decision at hand, including an examination of the pupil involved, or the Board may authorize its administrative staff or other competent person to perform this investigation for them. If the Board determines that a pupil is physically or mentally incapacitated to benefit from further normal schooling, the Board may assign the pupil to an exceptional class or to some available special school, or terminate the enrollment of said pupil.

(3) *Initial Assignments*: When this plan shall have become applicable to the first grade, pupils registering for the first grade may apply for attendance at the school in

the district of their residence or the nearest school formerly attended exclusively by their race, at their option.

Pupils entering the Mobile County school system for the first time, in grades to which the plan has become applicable, may apply for attendance at the school in the district of their residence, or the nearest school formerly attended exclusively by their race, at their option.

Upon the submission of this plan, schools shall no longer be designated by race.

(4) *Applicability of Plan*: This plan shall have application in the school year 1963-64 to the 12th grade, in the City of Mobile schools only. In the school year 1964-65 it shall have application to the 11th and 12 grades in all schools of Mobile County. It shall have application to grades already included and to one additional lower grade each school year thereafter until all 12 grades are affected.

(5) *Special Provisions for 1963-64*: The normal July 31 cut-off date for making applications for transfer for the 1963-64 school term shall be observed. For 12th grade pupils in the City of Mobile schools requesting transfer on or before July 31, the transfer provisions of this plan shall apply and race or color shall not be considered as a factor in acting upon such application. Public notice of the deadline was given by publication in a daily newspaper of general circulation in Mobile County one week prior to the closing of the period for receiving transfer applications, as a conscious reminder to the parents and guardians.

BOARD OF SCHOOL COMMISSIONERS
OF MOBILE COUNTY

201a

Plaintiffs' Exhibit No. 6 at July 1967 Hearing

METROPOLITAN AREA	NUMBER OF STUDENTS TRANSPORTED (1966-67) NEGRO	WHITE	ATTENDANCE AREAS UPON WHICH STUDENTS ARE TRANSPORTED
Adams	80		Saraland & Satsuma (discon't. for 1967-1968)
Azalea Road		721	Area served by Azalea Road
Blanville		29	Special Education Students
Blount	49		Thomas area
Central	99		Area served by Central & Austin (Austin discon't. for 1967-1968)
Clark		378	Area served by Clark
Craighead		269	S. Brookley & S. Morningside
Davidson		977	Area served by Davidson
Dickson		115	Dodge (discon't. for 1967-1968)
Eight Mile		121	Area served by Eight Mile
Hall	126		S. Brookley & Shepard (Shepard discon't. for 1967-1968)
Hillsdale	18		Semmes & Orchard (discon't. for 1967-1968)
Mobile Co. Trng.	582		Satsuma & Saraland (discon't. for 1967-1968)
Old Shell Road		43	Griggs (discon't. for 1967-1968)
Orchard		190	Semmes (Some will be discon't. for 1967-1968)
Prichard Jr. High		110	Area served by Prichard
Rain		435	Area served by Rain
Russell		84	Special Education Students, school closed for 1967-1968)
Shaw		650	Area served by Shaw
Shepard		293	Area served by Shepard
Toulminville	75		Area served by Toulminville and Austin (Austin discon't. for 1967-1968)
Vigor		649	Area served by Vigor

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METROPOLITAN AREA	NUMBER OF STUDENTS TRANSPORTED (1966-67) NEGRO	WHITE	ATTENDANCE AREAS UPON WHICH STUDENTS ARE TRANSPORTED
*** Warren	21		Austin area (discon't. for 1967-1968)
*** Washington	360		Area served by Washington and Austin (Austin discon't for 1967-1968)
* Whistler		215	E. Parks (No school is ava
Mill		237	Beau Terre (No school is a
*** Williamson	94		S. Brookley & Shepard (Bo discon't. for 1967-196
* Woodcock	8	93	Brookley Air Force Base

RURAL AREA	NUMBER OF STUDENTS TRANSPORTED (1966-67) NEGRO	WHITE	(RURAL SCHOOLS HAVE NO GEOGRAPHIC ATTENDANCE AREAS)
Alba		734	
Baker		945	
Belsaw	239		
Burroughs	100		
Calcedeaver		264	
* Citronelle		641	
Cleveland	198		
Dauphin Island		39	
Davis		493	
Dawes Union	150		
Dixon	356		
Griggs		342	
Hollinger's Island		298	
Indian Springs		271	
Lee		405	
Lott	726		

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RURAL AREA	NUMBER OF STUDENTS TRANSPORTED (1966-67) NEGRO	WHITE	(RURAL SCHOOLS HAVE NO GEOGRAPHIC ATTENDANCE AREAS)
* Mobile County High		899	
* Montgomery		426	
* Mt. Vernon		56	
Saint Elmo	722		
Satsuma		938	
* Summa		991	
Tanner Williams		278	
* Theodore	1	1310	
Thompson	51		
* Wilmer		272	

* It is anticipated that these schools starred once will have desegregated bus service in 1967-1968. It is impossible to project numbers with accuracy at this time.

* Bussing will be discontinued in 1967-1968

* Bussing will be partially discontinued in 1967-1968

Plaintiffs' Exhibit No. 24 at July 1967 Hearing

COPY

February 17, 1967

BOARD AGENDA ITEM

From: Mr. Shout

TRANSPORTED ELEMENTARY CHILDREN IN THE METROPOLITAN AREA: The Pupil Personnel Office has studied the geographical location of elementary school buildings within each metropolitan area including Mobile, Chickasaw, and Prichard. This study was conducted for the purpose of determining the distance that children have to travel who live at the furthermost point in each attendance area from the school which they attend. Time did not permit a comprehensive survey or having maps prepared by individual schools which would have determined the exact location of the residence of each pupil in attendance at a particular school. The distance from each school was determined by measurement in accord with the scale to which the map was drawn. The criteria used in all cases was the greatest distance that Russell pupils would be required to travel during the next school year in order to get to the Leinkauf School and back home.

Set forth below is a summary of schools serving elementary children who have to travel at least as far or farther than will the pupils formerly attending Russell.

I. Schools where elementary children reside within the attendance area but have no public school bus transportation provided:

Plaintiffs' Exhibit No. 24 at July 1967 Hearing

A. Austin School—Pupils residing as far or farther from school as the formerly Russell pupils are not in the same socio-economic situation.

II. Schools where elementary school children reside outside the attendance area and no public bus transportation is provided but because of approved earlier patterns of school attendance or the closing of a school and re-assignment do not attend the school serving the area of their residence.

A. Old Shell Road (pupils from the Toulminville area)

Previously the Board denied the request of the Toulminville group for public bus transportation to the Old Shell Road School.

B. Hall School—Pupils residing in the Texas Street area.

C. Leinkauf—Pupils re-assigned from Russell.

III. Schools where elementary children are now furnished public school bus transportation from out-of-district attendance areas as approved by the Board.

A. Warren—Negro pupils residing in the Austin area.

B. Hillsdale—Negro students residing in the Semmes area.

C. Hall—Negro pupils residing in the Kate Shepard area and Negro pupils residing in the South Brookley area.

Plaintiffs' Exhibit No. 24 at July 1967 Hearing

D. Craighead—Pupils residing in the South Brookley attendance area and pupils residing in the South Morningside area.

IV. Schools where elementary children are presently being transported by public school bus from out-of-district attendance area approved by the Board but will not be transported by public school bus transportation during the 1967-68 school year.

A. Dickson—Pupils who reside in the Fonde attendance area.

B. Old Shell Road—Pupils who reside in the Cypress Shores-Todd Acres area.

V. Schools where elementary children have been granted transfers from out-of-district or have elected to exercise options as provided for under policy.

A. There was no way to make an estimate within such a short period of time as to the number of pupils who live as far or farther from the school that they attend than those pupils formerly assigned to Russell School.

B. Based on present policy none of these out-of-district children are being furnished public school bus transportation.

In considering providing public school bus transportation for those pupils re-assigned from Russell to Leinkauf or for those pupils attending other schools listed in this re-

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port, the Board would also need to consider another related problem. If the Board approves transporting by public school bus those pupils from Russell to Leinkauf or those pupils from other schools listed in this report, they must decide if they are going to provide transportation for those pupils residing in the metropolitan attendance area who elect to attend an out-of-district school by the exercising of an option as provided for under present Board policy. It is recommended by the Pupil Personnel Division that public school bus transportation should not be expanded to include pupils residing in the metropolitan areas because our present Court Plan and Board policy do not include provisions for this type of service. Neither does our Court Plan or present policies provide for this type of service to be offered to those students who are attending school out-of-district either by approved transfer or option. With the exception of the Austin School there are no children including those formerly assigned to Russell School who reside within the attendance area of the school to which they are assigned that are two miles or more from that school. Pupils who do reside a greater distance are out-of-district pupils who have elected by previously established approved patterns of attendance, by transfer, or by option to attend an out-of-district school.

/s/ Sam H. Shout

SHS/tlp

Plaintiff-Intervenor's Exhibit No. 64 at July 1967 Hearing

[Map Omitted—See Original Record]

Plaintiff-Intervenor's Exhibit No. 64 at July 1967 Hearing

Report on Research of the Pupil Personnel Office for Use in Planning for the Full Utilization of School Facilities in the Downtown Area

During the past several years there has been an increase in the shifting of population from the downtown area and also within the downtown area with many schools increasing in enrollment while others have shown a decrease. Because of this it was felt that a study of the downtown area was necessary with the purpose in mind of reviewing what has been happening concerning the student population and to look at the developments that have taken place and are planned that would affect the school enrollment in this area of Mobile.

It was suggested that a report on alternatives which might merit consideration in making a full utilization of the public school facilities in this area be made. For the purpose of this study, the schools included were those in the city of Mobile east of the I-65 Highway and north of the I-10 Highway. We excluded the Morningside School attendance area. Morningside was excluded because the students completing elementary there will go to Azalea Road and Davidson for Grades 7 through 12.

Enrollment Trends

The enrollments of the schools during the school years 1962-63 through 1966-67 were used to see what the trend has been. The students who are assigned and transported to the schools in this area from other areas of Mobile County have been excluded from the enrollments for each school. The students transported out of this area by the Board during this period have been added.

The following is a table showing the enrollments in the different schools and the trend that has developed.

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FORMERLY WHITE SCHOOLS ENROLLMENTS

School	1962-63 Elem.	1962-63 Jr.	1962-63 Sr.	1963-64 Elem.	1963-64 Jr.	1963-64 Sr.	1964-65 Elem.	1964-65 Jr.	1964-65 Sr.	1965-66 Elem.	1965-66 Jr.	1965-66 Sr.	1966-67 Elem.	1966-67 Jr.	1966-67 Sr.
Arlington	299			242			400			396			358		
Barton		854			673			531			Closed			Closed	
Craighead	571			611			432			397			317		
Crichton	631			648			642			641	108		569	97	
Esnes		1248			894			1038			1136			1061	
Evans	421			410			405			328			330	39	
Gorgas	836			635			520			274	166		Closed ---		
Leinkauf	433	62		415	57		364	53		311	64		304	34	
Maryvale	959			915			793			729			628		
Mertz	611			639			630			577			527		
Murphy			3219			2983			2921			2732			2413
Oakdale	351	73		279	48		Closed---			---			---		
Old Shell Road	365			333			328			312	59		553	102	
Phillips		1273			1175			1166			1283			1264	
Russell	312			315			292			268			259	29	
Toulminville		465			384	112		295	177	Closed ---					
Westlawn	524			523			495			493			493		
Woodcock	621			614			575			540	60		476	44	
TOTAL	6934	3975	3219	6579	3231	3095	5876	3083	3098	5266	2876	2732	4814	2670	2413

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FORMERLY NEGRO SCHOOLS ENROLLMENTS

Schools	1962-63			1963-64			1964-65			1965-66			1966-67		
	Elem.	Jr.	Sr.	Elem.	Jr.	Sr.	Elem.	Jr.	Sr.	Elem.	Jr.	Sr.	Elem.	Jr.	Sr.
Caldwell	801			827			683			650			601		
Central			1675			1749			1840			1917			1428
Council	806			781			773			772			748		
Dunbar		1173			1252			1152			1116			1111	
Emerson	683	624		590			605			629			643		
Fonvielle	1286			1357			1319			1600			1117		
Gorgas													964		
Hall										913			1036		
Howard	629			617			658			684			665		
Owens	1587			1604			1770			1625			1433		
Palmer				269			273						---	---	---
Southside					607			582			534			497	
Stanton Road	434			774			1053			1187			1059		
Toulminville															623
Warren	441			458			447			424			408		
Washington	261	930			1170			1284			1355			1503	
Williamson	816	427	449	857	385	585		391	786		383	761		532	752
TOTALS	7744	3154	2124	8134	3414	2334	7581	5409	2626	8484	3388	2678	8674	3643	2803

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It should be noted that from 1962-63 to 1966-67 the formerly white schools have consistently decreased in enrollment: Elementary 2120 (6934-4814), Junior High School 1305 (3975-2670), and Senior High School 806 (3219-2413). Total decreased in formerly white schools is 4231. The formerly Negro schools during the same period showed an increase: Elementary 930 (8674-7744), Junior High School 489 (3643-3154), and Senior High School 679 (2803-2124). Total increased in formerly Negro schools is 2098.

Changes Made in Availability of Facilities

During the period 1962-63 through 1966-67, the Oakdale Elementary School and the Barton Junior High School were discontinued as schools. An eight-room annex to the Owens Elementary School and five rooms at Howard (Northside) were destroyed by fire, and 15 classrooms at Williamson were destroyed by vandalism. The size of the school at Maryvale was reduced from thirty classrooms to 18 classrooms by the construction of a new school building. The Gorgas and Toulminville school buildings were closed but later re-opened as predominantly Negro schools. During the same period George Hall Elementary School was constructed, and additions were added at Stanton Road and Mae Eanes.

Present Availability of Classrooms

There are at the present time in the formerly white schools 23 vacant elementary classrooms and space to accommodate additional students at Murphy High School and Mae Eanes Junior High School.

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Phillips Junior High School is overcrowded. There are six portable classrooms being used at schools in this area: one at Mertz, one at Old Shell Road, and four at Phillips. We are now accommodating *nine* classrooms of elementary students transported to Craighead and Old Shell Road from the South Brookley, and the Cypress Shores and Todd Acres areas. We are also providing for *twelve* classrooms of junior high school students in the elementary schools of the downtown area. If the transportation of students into this area and the housing of junior high school children in the elementary schools should be discontinued at some time in the future, there should be an additional 21 vacant classrooms available on the basis of our present enrollment. This would mean a total of 44 elementary classrooms would become vacant and this number could increase if present trends in enrollment continue.

There are at the present time 10 vacant classrooms in the formerly Negro elementary schools of this area. There are now 39 portable classrooms being used to relieve crowded conditions at seven of the formerly Negro schools and in two or three places additional portables are needed. We are accommodating *eight* classrooms of students transported to Hall and Williamson from the South Brookley and Lloyd Station areas. In four schools (Southside, Emerson, Howard and Williamson), there is at the present time a need to replace part or all of the available facilities.

Plans Approved or Recommended:

The following building programs have been approved by the Board or have been recommended for consideration:

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1. Construction of a thirty teacher school at Howard to replace the present facility and portables and to provide relief for Caldwell and Owens.
2. Construction of an addition to Williamson High School to replace all substandard facilities and portables.
3. Construction of a new elementary school to replace the present Emerson building and provide relief for Council School.
4. Construction of a new junior high school to replace the present Southside building.
5. Construction of a new senior high school in the Toulminville area to relieve Central and release the present building to be used for a junior high school to relieve Washington.

The above new construction will relieve 35 of the 39 portables now in use in the formerly Negro schools of this area. The remaining four portables are assigned to Stanton Road and Gorgas Schools. If the enrollment trend in the Toulminville area continues, there will be an increased need for relief in this area.

Developments Planned By Other Agencies

Other proposed developments which would have an effect on school population and the need for facilities have been discussed with the Mobile Housing Board, the Mobile City Planning Commission, and Mobile State Junior College.

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According to information which has been furnished to the Pupil Personnel Office by the Mobile Housing Board, at the present time three major projects are being developed in the downtown area. Others will be developed in the future.

Michigan Avenue Project (Project Alabama 2-10)

This project will contain 450 dwelling units with 212 units reserved for elderly families and 238 units for regular family occupancy. It is estimated that there will be about 500 children in the project. It is estimated that of these children 150 will be pre-school age, 200 elementary, and 150 junior high and senior high students. It should be assumed that many of the families moving into the project housing are at the present time residents of the downtown area, and only part of the students would represent growth for the general area. It would mean though that we would have some shifting of population which will result in vacant classrooms being shifted from one school to another.

The Central-Texas Street Project (Project Alabama R-38)

According to the Housing Board, there will be fewer families in the Central-Texas Street area after redevelopment, but the number of children to be served by the schools probably will remain about the same as it is at the present time. This is because the average family in public housing units will have more children of school age.

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Water Street Project (Project Alabama R-34)

The acquisition of houses in the Water Street Project area has resulted in a decrease in the number of children in the area at the present time, but it is anticipated by the Housing Board that the number of school age children will increase after the project has been completed.

The Mobile City Planning Commission's zoning regulations for this downtown area are expected to result in some increase in the population inside Broad, Beauregard, and Canal Streets. They are attempting to promote the redevelopment of some of the residential areas into desirable neighborhoods. The street plans, when completed, will result in some major changes in the traffic patterns and may make it necessary to re-design some of the school attendance areas in order to prevent children having to cross major streets to attend school.

A conference was held with Mr. Bishop, president of Mobile State Junior College, concerning their plans for the expansion of their present facilities. Mr. Bishop indicated that he plans to request of the Board of School Commissioners that the Caldwell School building located adjacent to the college campus be sold to the college for use in their expansion program. It seems that the college is at the present time in need of additional facilities to accommodate the students enrolled.

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Suggestions For Maximum Utilization of Facilities In the Downtown Area

ALTERNATIVE I

As reported to Dr. Burns in an earlier report, Augusta Evans' enrollment held up until the last year and estimated for next year. The drop seems to have resulted because of two major factors. First, the area served by Evans is about completely developed and the children of the residents are in higher grade levels with few young couples with younger children moving into the area. Second, much of the enrollment over the past few years has been made up of out-of-area children. With a decline in enrollments in areas such as Mertz, Woodcock, Westlawn so that the schools in those areas can adequately house the children, the new addition of Fonde, and the construction of John Will relieving Crichton of the Forest Hill Area children has resulted in a reduction in the number of transfer requests each year to attend Evans and has increased the requests to return to the school in the area of the residence. For example—In 1962-63 a total of 106 transfer requests were granted to Evans and in 1966-67 only 18 has been requested and granted.

In reviewing the census reports, it was determined that 205 children of elementary school age reside in the Evans School attendance area. The report shows only 100 pre-school age children ages 2 to 5, in this same attendance area. It would be anticipated that many of these pre-school age children would enroll in either private or parochial schools upon attaining school age. These figures are not completely accurate in that it is possible that some residents were not contacted by the census takers. However, assum-

intiff-Intervenor's Exhibit No. 64 at July 1967 Hearing

the census information is reasonably accurate, we ulate that approximately 82 pupils out of a total of 367 ils enrolled at Augusta Evans are out-of-district pupils. he Augusta Evans building has 12 classrooms now being d to serve grades 1-7. The following suggestions are red for consideration in regard to the re-assignment of ils now attending the Evans School. If approved, the gested plan would enable us to make better utilization not only the Evans School but several other schools luded in our downtown area study.

Pupils enrolled in grade 7 at Augusta Evans would be assigned to the 7th grade at Sidney Phillips. Pupils olled in grades 1-6 would be re-assigned to either Old ell Road, Crichton, or Westlawn depending on the graphical location of the residence of their parents. t-of-district pupils would be re-assigned to either the ool serving their attendance area or the school approved them by transfer request during the April 1-15 transfer riod. This action would permit using the Augusta Evans ilding to accommodate special education classes from aighead, Crichton, and Russell and at least two physi- ly handicapped classes to be organized by the Division of rriculum and Instruction. The Evans building is operly located and constructed to serve adequately as a ool for special education and the physically handicapped. addition, this plan would permit the re-assignment of ose pupils housed in the Russell School in regular classes grades 1-6 to either Woodcock or Leinkauf depending the geographical location of the residence of their rents. Support for this alternative is indicated in the port on the conference with the Augusta Evans delega- on as reported in the attached report.

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This would eliminate the need for continued operation of the Russell School. Pupils in grade 7 at the Leinkauf, Crichton and Old Shell Road Schools would be re-assigned to Sidney Phillips and those in the Woodcock and the Russell Schools to Mae Eanes.

In order to accommodate these additional 7th grade pupils at Sidney Phillips, it is proposed that the 9th grade pupils at Sidney Phillips School be re-assigned to Murphy High School, thereby making Murphy a four-grade school. This would accomplish five desirable goals: (1) to fully utilize the existing facilities at Murphy and Augusta Evans (2) to eliminate having 7th grade students housed in elementary schools included in this study (3) to eliminate operation of Russell School (4) to eliminate the portable buildings presently assigned to Sidney Phillips, and (5) to provide for more adequate facilities for special education and physically handicapped pupils.

Consideration could be given to the use of the Russell School to temporarily house the administrative offices during the renovation of the Barton building.

Since the Oakdale School is presently being used for storing of furniture, consideration could be given to the continued use of this facility for this purpose until final decisions have been made concerning the long range plan for furniture storage and finalizing plans on the Emerson and Southside Schools or consideration could be given to disposing of the property at this time.

If these suggestions are met with favorable consideration, it will be necessary that approval be given for a survey to be conducted in most of those schools involved in either losing or gaining students for the purpose of collecting

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empirical data to be utilized in planning for implementation of the above mentioned changes.

Long range it may be possible to consider the re-assignment of 9th grade pupils from Mae Eanes to Murphy.

Successful acquisition of the Caldwell School by the Mobile State Junior College will make it necessary to plan for the construction of a new predominantly Negro elementary school to serve that area.

ALTERNATIVE II

If the decision is made to retain the 9th grade pupils at Phillips and not to organize a school for special education and physically handicapped at Augusta Evans, the following proposal might be considered. Leave the special education classes in those schools to which they are presently assigned. All students in grades 1-6 at Evans will be re-assigned to either Crichton, Westlawn or Old Shell Road School based on the geographical location of the residence of their parents. All junior high pupils presently housed in elementary schools except ⅔ of those attending Woodcock and all of those attending Russell would be re-assigned to the Evans School. Approximately ⅔ of the junior high students at Woodcock and all of those at Russell will be re-assigned to Mae Eanes, thereby eliminating having junior high pupils housed in elementary schools in the downtown area. This would provide for approximately 262 7th grade pupils to be accommodated in the new junior high school organized at Evans. There would be a need to continue the use of portables at Phillips Junior High School or consider the construction of new permanent classrooms to accommodate those pupils presently housed in the portables at Phillips.

Plaintiff-Intervenor's Exhibit No. 64 at July 1967 Hearing

ALTERNATIVE III

Re-assign the 7th grade pupils at Evans to Phillips or either to Crichton, Old Shell Road or Westlawn depending on the geographical location of the residence of their parents. Re-assign the pupils in grades 1-6 at Evans to either Crichton, Westlawn or Old Shell Road depending on the geographical location of the residence of their parents.

Use the Augusta Evans building to temporarily house the administrative offices during the period of renovation of the Barton building. The future use of the Evans School could be decided upon during the next school year.

ALTERNATIVE IV

Permit all pupils to attend those schools in the downtown area to which they are presently assigned and utilize the vacant classrooms in the downtown schools by transporting in pupils from overcrowded schools when portable classrooms are not available to those schools.

In regard to the inquiry that was made by members of the Board as it appeared in the Board Minutes of October 12, 1966, it is felt that the decision concerning future needs of additional property at the Augusta Evans School will of a necessity need to be delayed until final decisions are made concerning the report of the downtown area schools.

Plaintiff-Intervenor's Exhibit No. 72
at July 1967 Hearing

May 1, 1963

MEMO: Dr. Burns

FROM: Dr. Scarborough

RE: Your memo of April 26—Neece Property in the Snug Harbor area.

The population in Prichard is fairly well stabilized by now it appears, so far as the total population is concerned. It appears to me that our difficulty lies not in too many or not enough schools, but in the matter in having the schools adjusted to the Negro or white population. With the addition of this new Prichard building for the Negroes, north of Carver School, and the use of Snug Harbor and Turnerville School for Negro schools that for some time this would meet the needs of the population of the Negroes from Telegraph Road to St. Stephens Road and from the Prichard City Limits northward to Highway I-65.

If the Board is to go along with permanent use of Snug Harbor and Turnerville for housing Negro children and by the building of the new Prichard Elementary School, north of Carver, I think you can see that they are fairly well housed. It is my opinion that if more Negroes move in that area we again would have to abandon another white school and that it in turn could house the increase of Negroes in a school between Craft Highway and Telegraph Road in the vicinity of Happy Hill. This would be a desirable substitution for Snug Harbor in that they would not have to cross the Craft traffic lane, but to make this exchange would cost the Board approximately one half of a million dollars. It

Plaintiff-Intervenor's Exhibit No. 72 at July 1967 Hearing

is my opinion that they will want to forego crossing Craft Highway and continue with the present facility at Snug Harbor in order to save this one half million dollars in buildings.

It might be worth consideration if the people, who resist our turning Snug Harbor into a Negro school, could find a way to make that property worth as much as a half of a million dollars. In such cases it might be worth the Board's consideration to abandon the use of Snug Harbor School and making use of the Neece property that we looked at. As I see it, these are the only reasons for our making use of the Neece property of which we looked.

Naturally if we had the Neece property and an 18 room building with modern facilities, it would be much more valuable than our present Snug Harbor assignment, but it would house no more children. As an investment it might be wise, but in the matter of housing our children at the least possible cost to the citizens, it looks as if Snug Harbor is our best bet.

C. L. Scarborough

CLS:wt

[1031]

Excerpt from Transcript of Proceedings, July 17, 1968

By Mr. Jones:

Q. Did you give any instructions or did anyone on your staff give any instructions to Mr. Clardy as to how to either determine neighborhoods or how to define neighborhoods? A. No, sir.

Q. Is there a workable definition or a standard definition which the School Board has used to define neighborhoods as such? A. Not unless it would be something very informal indeed that neighborhoods— We look upon neighborhoods in two different ways. You can create a neighborhood on a map in terms of geographic and natural barriers and that, but it's mighty, mighty, hard to identify a neighborhood sociologically and otherwise because that has to do with factors [1082] not fully understood and involves information we do not always have at our command, plus the fact that neighborhoods are constantly changing both psychologically and geographically and this makes the problem of organizing the School System very complex indeed.

Q. How many racially integrated neighborhoods are there in the City of Mobile? A. I really don't know.

Q. Do you have any estimate as to how many there are? A. No.

Q. How many all-white neighborhoods would you say there are? A. I do not know.

Q. How many all-negro neighborhoods? A. I do not know.

[1526]

Excerpt from Transcript of Proceedings, July 19, 1968

A. Wait, let me comment a bit about the relationship of grade structures.

First of all, as I mentioned previously, it was not my purpose to evaluate the particular grade structures used by the School System, but simply to make some kind of evaluation that whatever grade structure the System had adopted was being applied in a non-racial way. Now, one other point here I think, my view was that the grade structure should be applied consistently, but that did not mean there wouldn't be deviations from it. It would only mean that the deviations would have to be justified on some educational basis. In one way, it's difficult to say that the System actually has a grade structure. There are so many different grades in the—by school in the System.

The Court: Is that unique to this System?

The Witness: I have never encountered a System like this.

The Court: Have you ever encountered a system of this size that was uniform completely?

The Witness: [1527] No, sir, but as I say, I have never encountered one with such deviations as this one. Seven schools from 1 to 5; seven grades 1 to 6; one, grades 1 to 8; one, grades 1 to 12; one, grades 6 to 7; one, grades 6 to 8; and one 6 to 12; two with grades 7 and 8; four with grades 7 to 9; there are two, grades 7 to 12; two, grades 8 to 12; three, grades 9 to 12, and three, grades 10 to 12. So, there is a very

considerable amount of variation, although the present pattern at the elementary level is six grades at the school.

Mr. Philips: Your Honor, he has read that off from a list much too fast for us to copy to determine the validity of what he has said.

The Witness: By all means—

The Court: Surely.

Mr. Jones: Here it is. Would you continue, Dr. Lieberman.

The Witness: I need my notes.

[1528] Mr. Philips: If he needs his script to testify further, we can copy it later.

Mr. Jones: Your Honor, for the record, I don't think that the—Dr. Lieberman's notes can be referred to as the script.

By Mr. Jones:

Q. Dr. Lieberman, is it true that the summary of grade structures as made from you are notes that you previously referred to? A. That is correct.

Q. All right. Continue. A. Now, taking into account grade structure, one very obvious situation that called for analysis is the one at the west end of the district in the Hillsdale area.

Q. Is that a 1 to 12? A. That is a 1 to 12 grade structure, and the Hillsdale complex, the high school there had 49 graduating last year. Now, I think it's universally accepted among educators, especially those in secondary education, that a high school that has only 49 graduates is

far too small for a good educational [1529] program. Either you cannot offer or arrange the subjects necessary to meet the diverse needs and interests of pupils at that age, or if you did, you would have to do so at the cost of the taxpayers. If for example, there were three students that wanted to take physics or advanced math or something like that in a high school that had that few students, you wouldn't be able to supply the subject, or if you did so, to hire teachers that would only teach three or four pupils. I might add here that the most significant study of the American high school, the one by Dr. James Bryant Conant said that the elimination of small high schools was the biggest, most important step that could be taken to the improvement of secondary education in this country. Now, the Board has given great weight to, considerable attention to grade structure as I understand it. It has adopted a policy change of going from a 6-3-3 to a 5-3-4 plan and in the document that I read supplied by the Board, it was called a middle school montage, the rationale for the change was set forth. One of the things set forth in that rationale was the difference between the pupils in grades 5 and 6. [1530] That is when the difference in the pupils is the greatest. Now, we have a situation then, you know, if the difference between those grades is so important and the Board is considering reorganizing the entire System on that basis, it was impossible for me to understand how they could maintain the complex of grades 1 through 12. They say with the very small high school, for example, these students could have gone, for example, to Davidson which was under capacity. So Davidson was, I think, a hundred

and eighty-eight, was close to 200 under capacity and some students in that area, by my measurements were further away than the Hillsdale group. Now, I might say very candidly that this example seemed to me to be so flagrant to maintain a negro high school with only 49 in the class when there was room at another school, and considering the overwhelming educational reasons for phasing out a high school of that size that— I would say very candidly, that that alone in my judgment would have been the basis for questioning the entire approach of the Board.

Now, another illustration, there are two high schools that are very close together, Blount and Vigor.

[1531] Q. You want to refer to "Defendants' Exhibit 6"? A. Yes, which is the high school zone map supplied by the Board.

Now, here are the two high schools and they are very close together. The Vigor grade structure is either 8 or 9 to 12, I believe. Let's see, Vigor is 10 and Blount— It's the other way around, Blount is 8 to 12. So, the overwhelming or 100 percent negro high school is 8 to 12 and Vigor is 10 to 12. Now, obviously the only way— The dividing line here is a racial line. This is I-65 and to the west there are whites, and you notice how large the Vigor district is. Now, obviously the only way you could fill Vigor with grades 10 through 12, or the only way you could fill it with white students would be to have a tremendous area. If the two high schools had the same grade structure— Let's say Blount was 10 through 12. Then obviously it would have had to absorb some of the students since it's closer to the students than the Vigor area.

So, this was another example of where I think grade structure raised some question.

Then, another illustration, the Hall area. The Board [1532] plan calls for using or adding a seventh grade to Hall and it's on the junior high map, the seventh grade. It's listed as a junior high, but that is only for the seventh grade and that will be— In other words, only white seventh graders from this area, and the Board has indicated that it wants to keep them together because they are going to another eighth grade school, so that even now on paper it looks like there is considerable integration at Hall. Actually, they will have a segregated class in that school. It will be predominantly, regardless of whether it will be predominantly or under, the white students will be seventh graders and the intention is to keep them together in that school. Then— Well, those are some of the examples on grade structure.

Now, as I say, I certainly do not question the necessity for deviation in grade structure. The problem that I have is that the deviations always seem to result in more segregation, not less.

HEW Plan of July, 1969

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Washington, D. C.

July 7, 1969

Honorable Daniel Holcombe Thomas
Judge, District Court
P. O. Box 137
Mobile, Alabama 36601

Re: Davis, ET AL, United States of America, ET AL, vs. Board of School Commissioners of Mobile County, ET AL.

Dear Judge Thomas:

Pursuant to Court Order of June 3, 1969, we are enclosing six (6) copies of the plan formulated and recommended by the Office of Education of The Department of Health, Education and Welfare for the operation of schools in Mobile School District.

Sincerely,

J. J. Jordan

for Dr. Gregory Anrig
Director
Division of Equal Educational Opportunities
U. S. Office of Education

HEW Plan of July, 1969

A DESEGREGATION PLAN FOR THE MOBILE COUNTY PUBLIC SCHOOLS

A REPORT TO THE
SUPERINTENDENT

BY THE
DIVISION OF EQUAL EDUCATIONAL OPPORTUNITIES
UNITED STATES OFFICE OF EDUCATION
ATLANTA, GEORGIA

HEW Plan of July, 1969

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HEW Plan of July, 1969

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Regional Office
Room 404, 50 Seventh Street, N. E.
Atlanta, Georgia

July 7, 1969

Dr. Cranford H. Burns
Superintendent
Board of School Commissioners
of Mobile County
P. O. Box 1327
Mobile, Alabama 36601

Dear Dr. Burns:

In accordance with the June 3, 1969, order of the United States Court of Appeals for the Fifth Circuit, the following desegregation plan for ending the dual school system in Mobile County is submitted for your consideration.

We wish to express our appreciation for the cooperation received from you and your staff.

Sincerely yours,

JJ Jordan

Jesse J. Jordan
Senior Program Officer
Office of Education
Equal Educational Opportunities
Title IV

HEW Plan of July, 1969

CHAPTER I

BACKGROUND INFORMATION ABOUT MOBILE COUNTY

A. Location

Mobile is the oldest city in the state of Alabama, the second in size, and the only seaport serving the state. Located on Mobile Bay in close proximity to the Gulf of Mexico and the large river systems which feed the bay, the community is geographically favored by water resources of various types. The city of Mobile is part of the rapidly growing and developing Gulf Coast region, an area in which cities are merging physically in a long strip stretching from New Orleans to Tampa. The public school system of Mobile includes the metropolitan area of Mobile city and the surrounding county area of Mobile County. The total area of the county is 1,222 square miles, or 732,080 acres. Mobile County is situated in the extreme southwestern part of the state. It is bounded on the north by Washington County, on the east by Baldwin County, on the south by the Mississippi Sound of the Gulf of Mexico, and on the west by Jackson, George and Green Counties, Mississippi. From north to south its extreme length is 60 miles. From east to west its width is from 17 to 30 miles.

Major industries located in the area are shipbuilding, ship repair, cement, manufacturing of wood pulp and paper products, steel fabricating, foundries, aluminum industry, rayon fibers, naval stores, oil refining, clothing manufacturing, furniture manufacturing, pumps, batteries, paint, chemicals and fish and seafood products. Mobile is served by five railroads, four major airlines, 100 steamship lines, 55 trunk lines, and one of the most extensive river and canal systems in

the nation. The state of Alabama owns and operates the modern ocean terminal a Mobile, which can accommodate 32 vessels simultaneously. The Port of Mobile ra in the nation's top ten in terms of gross tonnage.

B. Population

As can be seen by examining Table 1-1, since 1950 the population of Mobile County has continued to record a modest gain in spite of the phase-out of Brookley Air Force Base. Between 1950 and 1960 Mobile County's population increased 27 percent while that of the metropolitan area of Mobile increased 31 percent, which is well above the national average of 18.5 percent and still farther ahead of Alabama's rate of 6.7 percent. The phase-out of Brookley did, however, affect Mobile County's estimated rate of growth. In fact, 1968 population estimates are only 18,100 above the 1960 figures reported by the U. S. Census of Population, a gain of 4.5 percent, which is substantially less than 1 percent annually. It must be noted that the future use of Brookley Facility by the City of Mobile, private industries, and education is expected to have a tremendous influence on population changes in Mobile. It has been projected that the population of Mobile County will reach 507,300 by 1995.

Approximately 32 percent of the total population of Mobile County is non-white. It has been projected that the non-white population will experience an insignificant decline from 32.2 percent in 1965 to 31 percent in 1995. The proportional decline will be caused primarily by increased in-migration of whites to fill employment demands in the white collar and skilled blue collar categories. It is estimated that 78.6 percent of the total non-white population of Mobile County live in the Metropolitan Mobile Area.

POPULATION

MOBILE COUNTY
1960

Year	Metropolitan Mobile	Mobile County
1960	264,747	314,301
1950	152,682	231,105

CHARACTERISTICS OF POPULATION—1960

Item	Metropolitan Mobile	Mobile County
Total Population	264,747	314,301
Male	128,373	152,703
Female	136,374	161,598
White	176,072	212,873
Male	86,136	104,641
Female	89,936	108,232
Non-white	88,675	101,428
Male	42,230	48,062
Female	46,445	53,366

ANALYSIS OF POPULATION—1960

Item	Metropolitan Mobile	Mobile County
White percent	66.5	67.72
Non-white percent	33.5	32.28
Population per household	*	3.69
Median age	*	24.9
21 years and over	*	172,382

* Not available

TABLE 1-1

HEW Plan of July, 1969

Maps 1-2 and 1-4 and Tables 1-3 and 1-5 show the distribution by percentage of the non-white population of Metropolitan Mobile and rural Mobile County respectively, according to zones developed by the Mobile County Regional Planning Commission.

C. Population and Employment

As a function of employment, the growth of population in Mobile County has responded primarily to increases in local job opportunities, although the availability of employment outside Mobile County has been quite influential at times. Mobile County's recent economic growth, however, has occurred with only modest increases in employment and population, primarily because growth has come from the county's automation-oriented industrial sector. For example, between 1960 and 1965, the Mobile area generated over $164,513,000 of new and expanded industrial investment, 68.7 percent of which came from chemical, paper, and power facilities -- all highly oriented toward automation.

Although the 1960-65 investment was substantial, and reflected considerable economic achievement, net new jobs during this period totaled 4,800 (the term net new jobs represents accessions less separations, and is the only true measure of employment growth). Between 1965 and 1968 new and expanded industrial investment totaled $298,607,000, 73 percent of which represented paper, chemical, and power expansion. During this period, however, net new jobs generated by the non-Brookley sector of the economy numbered only 3,400.

As of 1965 Mobile County's labor force participation ratio was 35.9; i.e., 35.9 percent of the county's population was actively seeking employment or was gainfully employed, either within the county or outside its boundaries. Thus, with a resident labor force of 119,300 in 1965, Mobile County's population totaled

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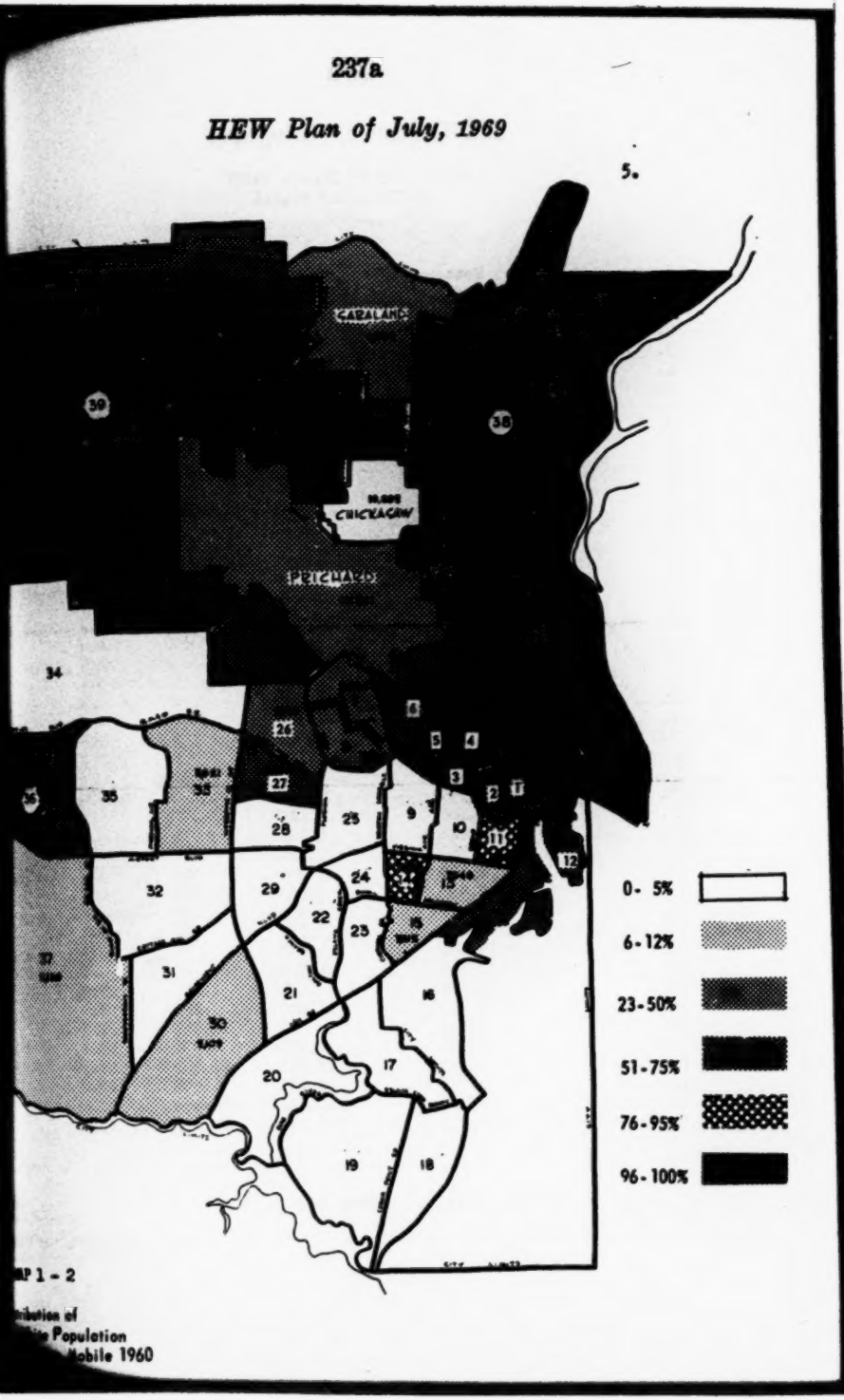

P 1 - 2

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e Population
Mobile 1960

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POPULATION BY CENSUS TRACT
METROPOLITAN MOBILE
1960

Census Tracts	Total Population	Total White	Total Nonwhite	Percent Nonwhite
1.	551	423	128	23.2
2.	7,566	3,141	4,425	58.3
3.	4,225	95	4,130	97.8
4.	8,675	15	8,660	99.8
5.	6,710	257	6,453	96.0
6.	5,822	1,522	4,300	73.8
7.	8,046	5,693	2,353	29.2
8.	5,908	3,151	2,757	46.5
9.	8,328	8,173	155	1.8
10.	6,993	6,289	704	9.9
11.	9,944	1,600	8,344	83.4
12.	5,750	2,114	3,636	64.3
13.	6,517	5,695	822	12.8
14.	5,522	684	4,838	87.6
15.	7,015	6,367	648	9.1
16.	861	821	40	2.2
17.	3,120	3,018	102	3.1
18.	2,251	1,901	350	1.5
19.	4,723	4,589	134	2.6
20.	1,577	1,522	55	3.1
21.	4,144	4,135	9	.0
22.	4,384	4,376	8	.4
23.	6,797	6,789	8	.1
24.	4,702	4,696	6	1.1
25.	9,666	9,634	32	.2
26.	5,199	3,689	1,510	29.0
27.	4,400	3,020	1,380	31.3
28.	5,641	5,626	15	.1
29.	3,360	3,353	7	.1
30.	2,109	1,986	123	5.6
31.	2,949	2,813	136	4.4
32.	5,271	5,225	46	.8
33.	3,621	3,314	307	8.4
34.	9,280	9,236	44	.3
35.	4,729	4,705	24	.5
36.	3,937	2,130	1,807	45.9
37.	2,220	2,040	180	8.1
38.	2,343	52	2,291	97.7
39.	7,923	2,997	4,926	62.1
Prichard	47,371	25,048	22,323	47.37
Saraland	4,595	4,136	459	10.0
Chickasaw	10,002	10,002	none	.0
Total	264,747	176,072	88,675	33.5

TABLE 1-3

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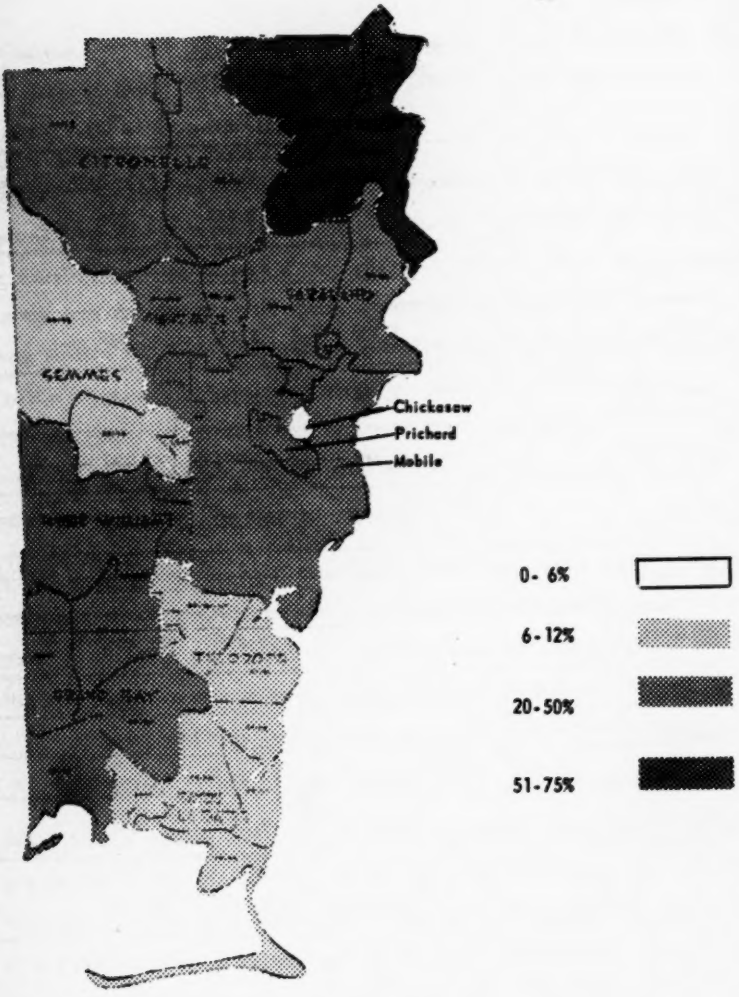
7.



MAP 1 - 4

tribution of
n-White Population
bile County 1960

HEW Plan of July, 1969

POPULATION BY CENSUS TRACT
MOBILE COUNTY, ALABAMA
1960

	Total Population	Total White	Total of Non-white	Percent Non-White
Bayou La Batre	6,604	5,853	751	11.37
Chickasaw	10,130	10,130	0	0
Citronelle	4,230	3,243	987	23.33
Eight Mile	1,706	1,368	338	19.81
Grand Bay	6,174	4,091	2,083	33.73
Mobile	202,779	139,160	65,619	32.36
Mt. Vernon	6,881	2,027	4,854	70.54
Prichard	47,431	25,028	22,403	47.23
Saraland	9,527	6,520	3,007	31.56
Semmes	4,498	4,155	343	7.62
Tanner-Williams	4,273	3,249	1,024	23.96
Theodore	10,068	9,262	806	8.00
TOTALS	314,301	212,086	102,215	32.52

TABLE 1-5

331,300 persons. By 1995 population should fall between 464,400 and 550,000, as the result of a resident labor force of from 176,500 to 209,000 persons and a participation ratio of approximately 38 percent .

Although population and employment have been adversely affected since the phase-out of Brookley Air Force Base began, it appears that Mobile County, without Brookley, is going to have a more desirable balance between the major segments of its economy. For example, compared with 1964, Mobile County's 1995 employment profile will have a much higher percentage of manufacturing employees, and a smaller proportion of government workers. (See Table 1-6.) Although government employment contributes much to a community's standard of living, employment associated with the production of goods and services for export and local consumption provides a more lucrative base for expansion.

By 1995 -- following the manufacturing trend -- construction, retail trade, wholesale trade, finance, insurance, real estate, and services will expand in importance. On the other hand, agriculture, transportation, communications and utilities employment, as well as self-employed persons and domestic workers, will decline as a percentage of total employment. Except for agriculture, however, these latter categories will still increase in absolute numbers.

Except for the massive effect on government employment of Brookley's phase-out, proportional shifts in the major employment categories between 1965 and 1995 will be caused primarily by technology and automation. Technology and automation will also be responsible for increasing proportions of professional and technical occupations and smaller proportions of blue collar jobs. Other significant characteristics of the work force will be: more employed women; fewer employed

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MOBILE COUNTY

"AT PLACE" EMPLOYMENT PROFILE

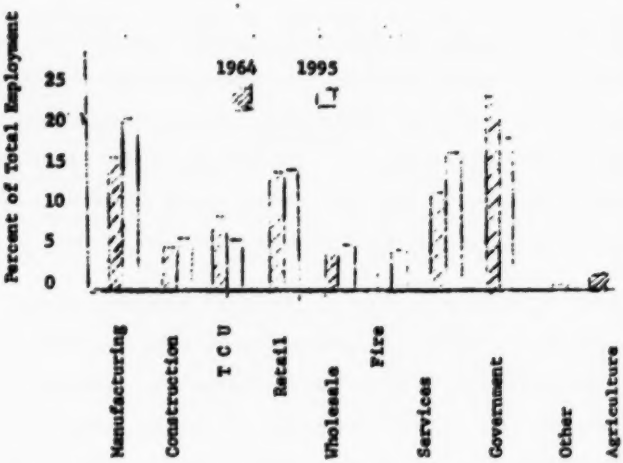

TABLE 1-6

persons under 18 years of age; older workers retiring earlier; greater labor mobility; a shorter work week; better educated workers; and increased fringe benefits and "take-home" pay. (See Tables 1-7 and 1-8.)

In 1965 unemployment in Mobile County totaled 5,100, or 4.3 percent of the civilian "at place" labor force. By 1995 the unemployment rate will more than likely remain about the same as in 1965; in absolute numbers, however, it should range somewhere between 7,900 and 9,300. Although jobs will be "steadier," competition for labor, combined with greater labor mobility, will prevent the unemployment rate from improving drastically.

HEW Plan of July, 1969

AVERAGE ANNUAL CIVILIAN "AT PLACE" EMPLOYMENT

MOBILE COUNTY: 1960-95

(In Thousands)

	Planning Area		
	Low	Medium	High
1960		108.9	
1961		108.2	
1962		108.6	
1963		112.3	
1964		113.2	
1965		113.7	
1966		111.1	
1967		105.7	
1968		105.1	
1969	106.0	107.0	108.0
1970	107.0	110.8	114.6
1975	114.5	120.7	126.9
1980	124.5	134.0	143.4
1985	137.0	149.5	162.1
1990	152.0	166.0	180.1
1995	169.5	185.0	200.6

TABLE 1-7

CIVILIAN "AT PLACE" EMPLOYMENT PROFILE

PERCENT DISTRIBUTION, BY MAJOR CATEGORY

MOBILE COUNTY: 1964 and 1995

	1964	1995
Nonagricultural	98.7	99.5
Wage and Salary	84.7	89.0
Manufacturing	15.2	19.6
Food and Kindred Products	2.2	2.3
Textiles and Apparel	0.1	0.4
Lumber and Wood Products	1.1	0.6
Paper and Paper Products	5.6	4.2
Chemical and Allied Products	1.6	3.2
Shipbuilding and Repair	2.3	2.9
Other Manufacturing	2.1	6.0
Nonmanufacturing	69.5	69.4
Construction	5.7	6.7
TCU 1/	8.5	6.0
Trade	16.2	18.8
Retail	13.3	13.8
Wholesale	4.9	5.0
FIRE 2/	3.5	5.0
Services and Miscellaneous	11.3	15.4
Government	22.3	17.3
Other Wage and Salary	—	0.2
Other Nonagricultural	14.0	10.5
Agricultural	1.3	0.5
Total	100.0	100.0

1/ Transportation, Communications and Utilities
2/ Finance, Insurance and Real Estate

Sources: Department of Industrial Relations, Alabama State Employment Service, 1964
John H. Friend, Inc., 1995

TABLE 1-8

D. Personal Income

Total personal income in Mobile County totaled $747.7 million in 196 and is projected to reach $610 million by 1970. The combination of gain in population and increase in per capita income will be responsible for the larg growth of total personal income.

With the per capita income increase from $2,250 in 1965 to $2,500 in 19 the average family annual income is expected to reach $9,066 for the same perio of time. The average annual family income in Mobile County should approach $15,400 by 1995. The gain represents an increase of over 85 percent. In 199 approximately 20 percent of all families in the County will earn $15,000 or mor compared with 6.6 percent in 1965. Only 6.5 percent of all families will earn $7,455 or less in 1995. In 1965 the percentage was 61.6.

See Table 1-9 for projected per capita income, total personal income, a average family income for Mobile County.

The 1960 Census revealed that of the 73,993 families in Mobile County, 4,806 families had annual family incomes of under $1,000, 6,525 had annual fami incomes between $1,000 and $1,999, and a total of 18,815 (25 percent) had annual family incomes of under $3,000. The median family income in 1960 was $5,132.

Table 1-10 offers a more up-to-date distribution of families by income class. Map 1-11 and Table 1-12 show the percentage of distribution of families in Metropolitan Mobile earning an annual family income of $3,000 or less.

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Population, income, and employment data referred to in this discussion was obtained from the following publications:

Friend, John H. The Shape of the Future: An Economic and Population Study of Mobile, Baldwin, and Escambia Counties, Alabama. Clearinghouse for Federal Scientific and Technical Information, Washington, D. C., 1969.

Mobile, Alabama: An Economic Abstract. Mobile Area Chamber of Commerce, 1969.

Mobile, Alabama: An Economic Handbook. Mobile Area Chamber of Commerce, 1969.

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TOTAL PERSONAL INCOME, PER CAPITA INCOME, AND AVERAGE FAMILY INCOME
MOBILE COUNTY: 1965-95
In Constant 1965 Dollars)

	Total (000,000)	Per Capita	Average Family
1965	747.7	2,250	8,300
1970	810.0	2,500	9,100
1975	966.6	2,600	10,100
1980	1,202.2	3,200	11,500
1985	1,484.6	3,600	12,600
1990	1,779.6	3.900	13,800
1995	2,232.1	4,400	15,400

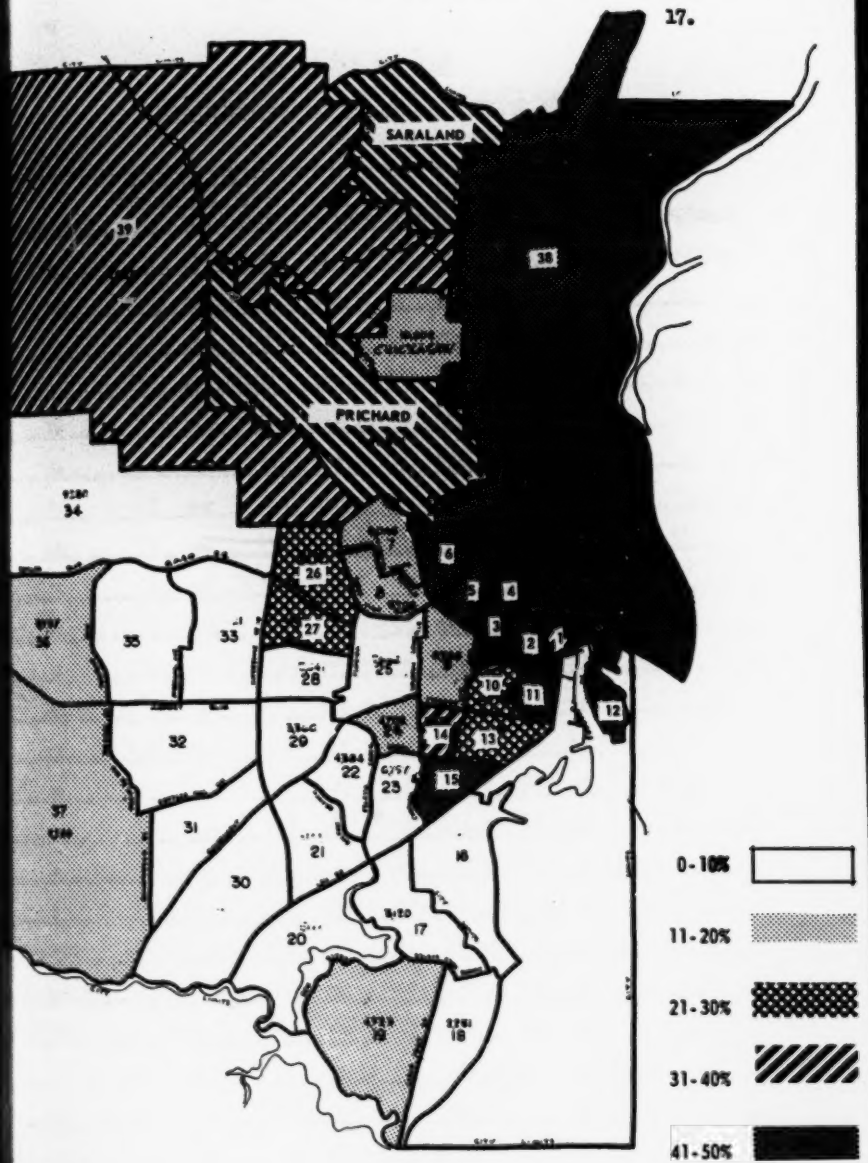
TABLE 1-9

PERCENT DISTRIBUTION OF FAMILIES, BY INCOME CLASS
MOBILE COUNTY: 1965 and 1995

	1965	1995
Under $3,000	14.0	1.5
$3,000 - 7,499	47.6	5.0
$7,500 - 14,999	31.8	73.5
$15,000 and over	6.6	20.0
Total	100.0	100.0

TABLE 1-10

HEW Plan of July, 1969



tion of
me Families ($3,000 and Below)
Mobile 1960

MAP 1 - 11

11.

METROPOLITAN MOBILE

LOW INCOME FAMILIES, BY CENSUS TRACTS 1960

Location	Census Tract	Total Population	Total Families	Family Income of Less Than $3,000	Percent
Mobile	1	551	42	15	36
	2	7,566	1,606	769	48
	3	4,225	924	495	54
	4	8,675	1,852	1,134	61
	5	6,710	1,542	638	41
	6	5,822	1,218	552	45
	7	8,046	2,001	336	17
	8	5,908	1,340	244	18
	9	8,328	2,242	274	12
	10	6,993	1,800	403	22
	11	9,944	2,185	1,006	46
	12	5,750	1,168	563	48
	13	6,517	1,733	357	21
	14	5,522	1,159	446	38
	15	7,015	1,712	766	45
	16	861	174	16	9
	17	3,120	833	72	9
	18	2,251	538	103	19
	19	4,723	1,192	130	11
	20	1,577	391	19	5
	21	4,144	1,053	77	7
	22	4,384	1,128	82	7

TABLE 1 - 12

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18a.

METROPOLITAN MOBILE

LOW INCOME FAMILIES, BY CENSUS TRACTS 1960

...ction	Census Tract	Total Population	Total Families	Family Income of Less Than $3,000	Percentage
...bile	23	6,797	1,778	158	9
	24	4,702	1,366	172	13
	25	9,666	2,747	206	7
	26	5,199	1,166	350	30
	27	4,400	1,064	323	30
	28	5,641	1,576	92	9
	29	3,360	849	4	0.5
	30	2,109	573	58	10
	31	2,949	743	53	7
	32	5,271	1,402	51	4
	33	3,621	728	71	10
	34	9,280	2,432	143	6
	35	4,729	1,218	52	4
	36	3,937	880	174	20
	37	2,220	532	82	15
	38	2,343	485	218	45
	39	7,923	1,609	564	35
...richard		47,371	10,712	3,483	35
...ickasaw		10,002	2,428	509	20
...erland		4,595	1,743	549	31

TABLE 1 - 12A

E. Educational Level of the Adult Population of Mobile County

Statistical data available from the Mobile Chamber of Commerce indicates that 156,448 persons 25 years old and over reside in Mobile County. Included in this age level are 3,677 persons (2.3 percent) who have not completed one year of school, 13,165 (8.4 percent) who have completed four years or less, and 46,349 (29.6 percent) who have completed between four and eight years of formal education. Consequently, forty percent (63,191 persons) of the population 25 years old or older have completed eight or less years of formal education.

1960 Census data indicates the following relative to the educational level of the adult population of the residents of Mobile County 25 years old or older:

1. Rural Mobile County—median school years completed: 8.7
2. Prichard—median school years completed: 8.8
3. Chickasaw and Saraland—median school years completed: 9.0
4. City of Mobile—median school years completed: 11.2
5. Average educational level of persons 25 years old or older residing within the boundary of the City of Mobile: 10.3.

However, training programs for adults have been available in the Mobile area for a number of years. The local school system has offered adult basic education for those persons who have not completed eight years of formal education. Murphy High School also offers technical and general educational courses to adults in various fields such as mechanical drawing, electronics, etc. Carver State Technical School and Southwest State Technical Institute are available to prepare high school graduates and persons 16 years old and older for

loyment in vocational, technical, and industrial occupations.

Qualified persons who desire to continue their education may enroll at le State Junior College, William Lowndes Yancey State Junior College, Mobile ge, Spring Hill College, or at the University of South Alabama.

Conclusions

An analysis of Chapter I indicates an increasing population with a tively stable ratio between white and non-white.

Employment will demand an increase in technical skills and a higher level ducation. Manufacturing will increase, but with heavier emphasis on tech- gy and automation.

These characteristics indicate a great need for increased educational rtunities that provide maximum "holding power" of students. In the decade he 1960's, 40 percent of the adult population had completed 8 years or less ormal education. Many of these citizens are Negro.

The economic, educational, and social needs of the next decades lend elling support for a unitary school system offering integrated educational rtunities at all levels with a larger emphasis on instructional programs ed to developing the comprehensive skills needed to manage a complex nology.

HEW Plan of July, 1969

CHAPTER II

STATUS OF SCHOOL DESEGREGATION 1968-69.

A. Desegregation of Pupils

In 1968-69 there were some 75,421 pupils in the Mobile County School sy
Of this total 43,992, or 58.3 percent were white and 31,429, or 41.7 percent
Negro. These pupils were housed in 91 school centers.

The procedures for determining the attendance of pupils at individual sc
centers were established by court orders of July 29, August 2, and August 13,
Actually these comprise one court order with amendments and hereafter in this
report will be referred to as the court order of July 29, 1968.

This court order of July 29, 1968, directed that the following provisions
be made for attendance of pupils at schools in 1968-69:

1. Pupils in rural Mobile County should exercise freedom of choice in the selection of a school.
2. Pupils in grades 9 - 12 in the metropolitan area and pupils in grade 8 in the Craighead and Carver zones should exercise freedom of choice in determining the school which they would attend.
3. Pupils in grades 1 - 8, except the 8th grade students in the Craighead and Carver zones in the metropolitan area, should attend schools in the attendance zone prescribed by geographic boundaries established by the court. Different boundaries were established for elementary schools and junior high schools.

Provision in the July 29 court order was made for transfer of pupils to ols other than the one in the geographic zone where the pupil resided. The l or his parents had to make application for transfer within prescribed dates the Central Office for the school system was required to keep a record of all sfers granted. Transfers were to be granted to:

1. Students whose race comprised the student minority in a school if such minority were five per cent or less;
2. Students who had only one grade to complete before moving up from the school last attended, but who would be placed in a different school by geographic lines prescribed.
3. Students who could show good cause for desiring a transfer, with racial matters being definitely eliminated as good cause.
4. Students requiring a course of study not offered at the school where geographic boundaries would place them;
5. Students attending special schools such as those for physically handicapped, mentally retarded, or gifted children, provided the matter of race was not involved.

The July 29 order gave the following directive regarding transportation:

Where transportation is generally provided, busses must be routed to the maximum extent feasible in light of the geographic distribution of students so as to serve each student choosing any school in the system. Every student choosing either the formerly predominantly white or the formerly predominantly Negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules and the School Board's transportation policy.

The effect of this court order in the desegregation of schools is shown in les 2-1 through 2-6. These tables show the name of the school which was in ation on September 27, 1968, the grade levels served by the school, and the

racial composition of the student body. They also show the total number of p transported, without regard to race. In most instances, however, the race being transported can be determined by the composition of the student body school to which they were transported.

The tables give the capacity of the school's permanent facilities in school center in accordance with the method followed by the school system in determining capacity. This method provides that the capacity of an elementary school is determined by multiplying the number of classrooms by 34. For junior and senior high schools, the number of teaching stations is multiplied by 2 schools with less than 1,000 pupils and by 29 for schools with over 1,000 pu In the case of extremely small high schools, smaller numbers than 28 or 29 a used for teacher allocation purposes. For the special school, shown in Tabl no formula for capacity is used.

The tables also give the number of portables used at each school in the 1968-69 school year.

The order of listing the schools in the various tables is, generally speaking, by geographic proximity from the south to the north. This was done order that data concerning adjacent schools could be studied.

In Table 2-1, which provides data for the rural schools, it will be shown that some Negro pupils chose to attend predominantly white schools but that no white pupils chose to attend Dixon, St. Elmo, Burroughs, Dawes-Union, Adams, Belsaw, or Lott. The total of the number of pupils in the rural schools is 19,023, of whom 15,186, or 79.8 percent are white and 3,837, or 20.2 percent are Negro. The 27 schools listed in Table 2-1 serve an area ranging from 17 to 3 miles wide and about 60 miles long, with Metropolitan Mobile being excluded in this listing.

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Table 2-2 deals with senior high schools in the metropolitan area, where ...on of choice was also in operation. It indicates that a number of Negro ...ils elected to attend predominantly white schools but that no white pupils ...e to attend Central, Toulminville, Mobile County Training School, Blount, and ...ity Gardens, and only two white pupils elected to attend Williamson.

The 11 senior high schools serving Metropolitan Mobile serve 15,498 pupils, ...om 8,458, or 54.5 percent are white and 7,040, or 45.5 percent are Negro.

Table 2-3 gives data for the junior high schools in the metropolitan area, ...e provision for transfers as previously described was made. It shows that ...ington, Mobile County Training, Carver, Trinity Gardens, and Hillsdale ...ined all Negro, and Dunbar has 5 white pupils in a student body of 933. Rain, ...e, Azalea Road, Scarborough, and Eight Mile each had less than 60 Negro ...ils, although these five schools did serve all Negro students living in their ...endance areas.

The 15 junior high schools in Metropolitan Mobile have a total of 11,976 ...ils in attendance, of whom 6,386, or 53.3 percent are white and 5,590, or ...7 percent are Negro.

Table 2-4, which provides information about the elementary schools of the ...opolitan area, where attendance was controlled by boundaries with provision ...transfer as previously indicated, shows that Howard, Fonvielle, Whitley, ...dew, and Hillsdale remained all Negro and a number of other schools had ...atively few white pupils. There were a number of predominantly white schools, ...o, which had either no Negro pupils or a very few.

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There are 28,142 pupils in attendance in the 42 elementary schools of the metropolitan area, of whom 13,886, or 49.4 percent are white and 14,236, or 50.6 percent are Negro.

Table 2-5 gives data on a special school for trainable pupils. This school serves the entire county. It will be noted that it is desegregated, with 76 white and 86 Negro pupils.

Table 2-6 provides summary data for Tables 2-1 through 2-5. The overall ratio of the pupil population is 58.3 percent white and 41.7 percent Negro. From information previously presented, however, it will be noted that this ratio varies considerably between metropolitan and rural areas and between grade levels within the metropolitan area.

The total of the schools listed on all tables is 96. Five schools in the metropolitan area, however, are listed on two tables since they have both elementary and junior high school grades or both junior high and senior high school grades. The total number of school centers operated as separate administrative units, therefore, is 91.

September 27, 1969

September 27, 1968

RURAL SCHOOLS, GRADES, PUPIL MEMBERSHIP BY RACE, NUMBER PUPILS TRANSPORTED, SCHOOL CAPACITY OF PERMANENT FACILITIES NUMBER PORTABLES

Schools	Grades	Pupil Membership			Number Pupils Transported	Capacity Permanent Facilities	Number of Portables
		White	Negro	Total			
1. Dauphin Island	1 - 6	57	2	59	50	102	0
2. Alba	1 - 12	1,578	2	1,580	709	1,470	8
3. Dixon	1 - 6	0	391	391	311	408	0
4. Grand Bay	1 - 6	715	19	734	514	850	0
5. Mobile County High School	7 - 12	578	29	607	425	700	7
6. St. Elmo	7 - 12	0	748	748	725	644	3
7. Hollinger's Island	1 - 8	486	1	487	261	390	4
8. Burroughs	1 - 6	0	414	414	97	612	0
9. Davis	1 - 6	779	5	784	495	850	0
10. Theodore	7 - 12	1,743	34	1,777	1,402	1,400	14
11. Griggs	1 - 6	1,042	0	1,042	393	544	15
12. Dawes-Union	1 - 6	0	158	158	124	204	0
13. Baker	1 - 12	1,038	0	1,038	845	806	11
14. Tanner-Williams	1 - 6	282	0	282	260	476	0

TABLE 2-1

Rural Mobile County
September 27, 1969

Schools	Grades	Pupil Membership			Number Pupils Transported	Capacity Permanent Facilities	Number of Portables
		White	Negro	Total			
15. Wilmer	1 - 6	305	60	365	271	408	0
16. Montgomery	9 - 12	759	28	787	646	784	0
17. Semmes	1 - 8	994	26	1,020	901	1,058	2
18. Saraland	1 - 6	830	0	830	0	850	0
19. Lee	1 - 6	924	1	925	463	850	2
20. Adams	1 - 12	0	779	779	270	1,160	0
21. Satsuma	7 - 12	1,344	3	1,347	1,028	1,036	14
22. Mt. Vernon	1 - 8	173	18	191	47	158	1
23. Belsaw	1 - 8	0	551	551	157	306	9
24. Calvert	1 - 6	86	0	86	42	102	0
25. Calcedeaver	1 - 12	300	0	300	269	304	4
26. Lott	1 - 12	0	568	568	509	816	0
27. Citronelle	1 - 12	1,173	0	1,173	754	1,380	0
Totals		15,186	3,837	19,023	11,968	18,668	94

27

TABLE 2-1a

Metropolitan Mobile
September 27, 1968

SENIOR HIGH SCHOOLS, GRADES, PUPIL MEMBERSHIP BY RACE, NUMBER PUPILS TRANSPORTED, SCHOOL CAPACITY PERMANENT FACILITIES, NUMBER PORTABLES

School	Grades	Pupil Membership			Number Pupils Transported	Capacity Permanent Facilities	Number of Portables
		White	Negro	Total			
1. Rain	9 - 12	760	49	809	12 (10-12)	448	0
2. Williamson	8 - 12	3	1,131	1,134	0	1,334	0
3. Murphy	9 - 12	2,707	147	2,854	0	2,900	0
4. Central	9 - 12	0	1,614	1,614	0	1,566	2
5. Toulminville	10 - 12	0	1,107	1,107	0	638	15
6. Mobile County Training	9 - 12	0	710	710	0	700	0
7. Blount	8 - 12	0	1,894	1,894	0	2,001	0
8. Vigor	10 - [illegible]	1,564	109	1,673	454	1,740	0
9. Trinity Gardens	9 - 12	0	637	637	0	476	0
10. Davidson	9 - 12	2,289	66	2,355	1,115	1,943	15
11. Shaw	9 - 12	1,136	196	1,332	448	928	16
Totals		8,459	7,660	16,119	2,029	14,674	48

TABLE 2-2.

Metropolitan Mobile
September 27, 1968

JUNIOR HIGH SCHOOLS, GRADES, PUPIL MEMBERSHIP BY RACE, NUMBER PUPILS TRANSPORTED, SCHOOL CAPACITY PERMANENT FACILITIES, NUMBER PORTABLES

School	Grades	Pupil Membership			Number Pupils Transported	Capacity Permanent Facilities	Number of Portables
		White	Negro	Total			
1. Bain	7 - 8	415	38	453	30 (7-9)	476	13
2. Eanes	7 - 9	982	57	1039	214	1148	0
3. Craighead	6 - 7	153	394	547	0	728	0
4. Phillips	7 - 8	838	113	951	0	980	0
5. Dunbar	7 - 8	5	928	933	0	1064	0
6. Washington	7 - 9	0	1493	1493	0	1015	15
7. Mobile County Training	6 - 8	0	568	568	0	560	4
8. Prichard	6 - 9	387	163	550	27	616	0
9. Carver	6 - 7	0	881	881	0	784	4
10. Trinity Gardens	7 - 8	0	420	420	0	392	7
11. Clark	7 - 9	1317	239	1556	253	1392	0
12. Azalea Road	7 - 8	1044	40	1084	411	1015	5
13. Hillsdale	7 - 9	0	225	225	0	336	0
14. Scarborough	6 - 8	1039	1	1040	658	928	0
15. Eight Mile	7 - 8	206	30	236	81	232	0

September 27, 1968

ELEMENTARY SCHOOLS, GRADES, PUPILS MEMBERSHIP BY RACE, NUMBER PUPILS TRANSPORTED, SCHOOL CAPACITY PERMANENT FACILITIES, NUMBER PORTABLES

Schools	Grades	Pupil Membership			Number Pupils Transported	Capacity Permanent Facilities	Number of Portables
		White	Negro	Total			
1. South Brookley	1 - 6	514	72	586	83	442	5
2. Morning Side	1 - 6	756	0	756	90	578	6
3. Williams	1 - 6	513	43	556	128	408	5
4. Maryvale	1 - 6	588	30	618	0	612	2
5. Herts	1 - 6	482	0	482	0	510	0
6. Westlawn	1 - 6	595	0	595	0	510	3
7. Woodcock	1 - 6	380	80	460	58	612	0
8. Hall	1 - 6	3	701	704	0	1224	0
9. Arlington	1 - 5	384	153	537	0	476	2
10. Council	1 - 5	0	560	560	0	578	0
11. Emerson	1 - 6	3	518	521	0	442	4
12. Leinkauf	1 - 6	323	125	448	0	442	0
13. Owens	1 - 6	0	1254	1254	0	1496	0

Table 2-4

Metropolitan Mobile
September 27, 1968

Schools	Grades	Pupil Membership - White	Negro	Total	Number Pupils Transported	Capacity Permanent Facilities	Number of Portables
16 Caldwell	1 - 6	1	401	402	0	578	0
17 Howard	1 - 6	0	465	465	0	408	3
18 Old Shell Road	1 - 6	282	130	412	0	476	0
19 Crichton	1 - 6	520	253	773	0	782	1
20 Stanton Road	1 - 6	3	1077	1080	0	1020	3
21 Fonvielle	1 - 6	0	1191	1191	0	1190	2
22 Gorgas	1 - 6	1	1138	1139	0	884	8
23 Palmer	1 - 5	52	688	740	0	578	6
24 Glendale	1 - 6	549	172	721	0	680	1
25 Whitley	1 - 5	0	421	421	0	612	1
26 Brasier	1 - 6	0	1197	1197	0	1156	1
27 Grant	1 - 5	3	1300	1303	0	1292	3
28 Robbins	1 - 5	2	805	807	0	850	0
29 Bienville	1 - 6	336	313	649	0	612	1
30 Hamilton	1 - 6	643	0	643	0	646	0
31 Chickasaw	1 - 6	383	0	383	0	812	0

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Desegregation of Staff

The court order of July 29, 1968, makes only the following statement about ff desegregation:

The decree does not contain any provision dealing with desegregation of faculty, new construction, or desegregation of facilities and activities. This Court's order dated May 13, 1968, fully sets forth the obligation of the School Board in these respects and must be implemented for the 1968-69 school year.

The May 13, 1968 order directed the implementation of the March 12, 1968 ree of the Court of Appeals for the 5th Circuit. This decree reads as follows:

III.

FACULTY AND STAFF ASSIGNMENTS

A. Faculty Employment. Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the dual system. Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty. The Board will continue positive and affirmative steps to accomplish the desegregation of its schools for the 1968-69 school year notwithstanding teacher contracts for 1968-69 may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The appellees shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school.

B. Dismissals. Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all

HEW Plan of July, 1969

staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

C. Past Assignments. The appellees shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual school system.

Table 2-7 provides information on the number of instructional employees by race in the various schools in Mobile County. Table 2-8 gives the same type of information about administrative and supervisory employees in the Central County Office.

It will be noted in Table 2-7 that all schools except Dauphin Island, a small school with 3 instructional employees, and Foreville, a large school with 38 instructional employees, have at least 1 person of each race. A number of schools have 2 or more persons of each race. The 12 child guidance personnal listed as the last item in Table 2-7 work full time in the schools but are not attached to any particular school.

The total number of instructional personnal serving in the schools o Oct.11,1968, was 2,781½, of whom 1,648½ or 59.2 percent were whits and 1,13

MOBILE COUNTY SCHOOLS
OCTOBER 11, 1968

School	Number of Class-Room Teachers		Principals		Other Personnel		Title of Position of Other Personnel*			TOTAL	
	White	Negro	White	Negro	White	Negro	A.P.	C.	L.	White	Negro
ADAMS	2	28		1		3	1	1	1	2	32
ALBA	52	2	1		3		1	1	1	56	2
ARLINGTON	14	2	1							15	2
AUSTIN	10	2	1							11	2
AZALEA ROAD	37½	2	1		3		1	1	1	41½	2
BAKER	32	2	1		3		1	1	1	36	2
BELSAW	1	17		1						1	18
BIENVILLE	16	3	1							17	3.
BLOUNT	2	70		1		5	2	2	1	2	76
BRAZIER	2	33		1						2	34
BROOKLEY	14	4	1							15	4
BURROUGHS	2	11		1						2	12
CALCEDEAVER	9	2	1							10	2
CALDWELL	1	13		1						1	14

* A.P. - Assistant Principal; C. - Counselor; L. - Librarian

Table 2 - 7

RACIAL DISTRIBUTION OF INSTRUCTIONAL STAFF
MOBILE COUNTY SCHOOLS
OCTOBER 11, 1968

School	Number of Classroom Teachers		Principals		Other Personnel		Title of Position of Other Personnel			TOTAL	
	White	Negro	White	Negro	White	Negro	A.P.	C.	L.	White	Negro
Calvert	1	1	1 T.P.							2	1
Carver	1	31		1		3	1	1	1	1	35
Central	2	62		1		4	1	2	1	2	67
Chickasaw	13	3	1							14	3
Citronelle	38	3	1		2		1	1		41	3
Clark	49	4	1		2		1	1		52	4
Council	1	16		1						1	17
Craighead	12	10	1		2		1		1	15	10
Crichton	21	4	1							22	4
Dauphin Island	2		1 T.P.							3	
Davidson	86	2	1		4	2	2	2	2	91	4
Davis	22	2	1							23	2
Dawes-Union	1	3		1 T.P.						1	4
Dickson	21	2	1							22	2
Dixon	2	10		1						2	11

MOBILE COUNTY SCHOOLS
OCTOBER 11, 1968

School	Number of Class-Room Teachers		Principals		Other Personnel		Title of Position of Other Personnel			Total	
	White	Negro	White	Negro	White	Negro	A.P.	C.	L.	White	Negro
Dodge	20	2	1							21	2
Dunbar	2	34		1		3	1	1	1	2	38
Eanes	35	3	1		3		1	1	1	39	3
Eight Mile	17	4	1		1			1		19	4
Emerson	1	16		1						1	17
Evans	7	7	1							8	7
Fonde	20	2	1							21	2
Fonveille		37		1							38
Forest Hill	17	2	1							18	2
Glendale	18	2	1							19	2
Gorgas	1	33		1						1	34
Grand Bay	19	2	1							20	2
Grant	1	38		1						1	39
Griggs	30	1	1							31	1
Hall	2	20		1						2	21
Hamilton	17	2	1							18	2

TABLE 2-7b

RACIAL DISTRIBUTION OF INSTRUCTIONAL STAFF
MOBILE COUNTY SCHOOLS
OCTOBER 11, 1968

School	Number of Class-Room Teachers		Principals		Other Personnel		Title of Position of Other Personnel			Total	
	White	Negro	White	Negro	White	Negro	A.P.	C.	L.	White	Negro
Hilledale	4	25		1		2	1		1	4	28
Hollinger's Island	16	1	1				"			17	1
Howard	2	13		1						2	14
Indian Springs	13	2	1							14	2
Lee	25	2	1							26	2
Leinkauf	10	3	1							11	3
Lott	1	21		1	1	2	1	1	1	2	24
Maryvale	17	3	1							18	3
Merts	13	2	1							14	2
Morningside	20	2	1							21	2
Mobile County High	19	3	1		2		1		1	22	3
Mobile County Training	1	48		1		4	1	2	1	1	53
Montgomery	27	2	1		3		1	1	1	31	2
Mt. Vernon	4	1	1 T.P.*							5	1
Murphy	99	6	1		8		3	3	12	108	6

* Teaching Principal

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HEW Plan of July, 1969

* Teaching Principal

MOBILE COUNTY SCHOOLS
OCTOBER 11, 1969

School	Number of Class-Room Teachers		Principals		Other Personnel		Title of Position of Other Personnel			Total	
	White	Negro	White	Negro	White	Negro	A.P.	C.	L.	White	Negro
Old Shell	10	2	1							11	2
Orchard	21	2	1							22	2
Owens	2	38		1						2	39
Palmer	1	22		1						1	23
Phillips	33	3	1		3		1	1	1	37	3
Prichard	17	2	1		3		1	1	1	21	2
Rain	45	3	1		3		1	1	1	49	3
Robbins	2	23		1						2	24
St. Elmo	3	26		1		3	1	1	1	3	30
Satsuma	50	2	1		2	1	1	1	1	53	3
Seraland	23	2	1							24	2
Scarborough	32	4	1		3	3	1	1	1	36	4
Semmes	32	2	1		3		1	1	1	36	2
Shaw	46	3	1		3		1	1	1	50	3
Shepard	14	1	1							15	1
Stanton Road	2	31		1						2	32

TABLE 2-7d

RACIAL DISTRIBUTION OF INSTRUCTIONAL STAFF
MOBILE COUNTY SCHOOLS
OCTOBER 11, 1968

School	Number of Class-Room Teachers		Principals		Other Personnel		Title of Position of Other Personnel			Total	
	White	Black	White	Negro	White	Negro	A.P.	C.	L.	White	Negro
Tanner-Williams	7	2	1							8	2
Theodore	61	4	1		4		1	2	1	66	4
Thomas	7	33	1							8	3
Toulminville	2	39		1		3	1	1	1	2	43
Trinity Gardens	2	39		1		3	1	1	1	2	43
Vigor	63	3	1		4		1	2	1	68	3
Washington	2	50		1		4	1	2	1	2	55
Westlawn	16	2	1							17	2
Whistler	17	3	1							18	3
Whitley	1	12		1						1	13
Will	18	2	1							19	2
Williams	14	2	1							15	2
Williamson	3	40		1		3	1	1	1	3	44
Wilmer	10	2	1							11	2
Woodcock	14	22	1							15	2
Child Guidance	2	2								2	2

r 40.8 percent were Negro. Of the 91 principals or teaching principals, 60, or 5.9 percent are white, and 31, or 34.4 percent are Negro. The "other" positions n schools consist of Assistant Principals, Counselors, and Librarians. There re 110 persons in this group, of whom 65, or 59 percent are white, and 45, or l percent are Negro.

In Table 2-8 the total number of personnel in the Central Office is shown to be 90, of whom 77, or 85.5 percent are white, and 13, or 14.5 percent are Negro. There is no Negro holding any of the first eight administrative positions listed.

HEW Plan of July, 1969

RACIAL DISTRIBUTION ADMINISTRATIVE
AND SUPERVISORY PERSONNEL
CENTRAL OFFICE

MOBILE COUNTY SCHOOLS
December 17, 1968

ADMINISTRATION	White	Negro	Total
Superintendent	1		1
Associate Superintendent	1		1
Assistant Superintendents	5		5
Treasurer-Comptroller	1		1
Psychologist	1		1
Psychometrists	1	1	2
Social Worker	1		1
Coord. Vocational Education	1		1
Librarian Material Center	1		1
Engineer	1		1
Adm. Asst. to Engineer	2		2
Coordinators	7	1	8
Supervisors	26	4	30
Supervisors Project Mobile	3		3
Specialists Project Mobile	1	1	2
Helping Teachers Project Mobile	8	1	9
Attendance Workers	3	4	7
Nurses	3	1	4
Forester	1		1
Woodsman	1		1
Supervisors Maint., Trans.	2		2
Attorney	1		1
Vocational Coordinator (Adults)	1		1
Counselor (MR)	1		1
Rehabilitation Counselors	3		3
Totals	77	13	90

TABLE 2-8

HEW Plan of July, 1969

C. New Construction

The passage from the July 29, 1968, court order quoted in the preceding section on Staff Desegregation also covers new construction. The Fifth Circuit Decree of March 12, 1968, gives the following directive on this subject:

II.

CONSTRUCTION

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not fail to consolidate schools because desegregation would result.

Until such time as the Court approves a plan based on the survey conducted pursuant to Section IV herein, construction shall be suspended for all planned building projects at which actual construction has not been commenced.

Leave to proceed with particular construction projects may be obtained prior to the completion of the survey upon a showing by the appellees to the Court, that particular building projects will not have the effect of perpetuating racial segregation.

Section IV, referred to in paragraph 2 of the above quoted part of the decree, outlines in detail the nature of the survey which the Court ordered the school district to make. It calls for a description of each school in the school system, giving the size of each site, the number of buildings, the number of regular and portable classrooms, recommendations for future use and a number of other items of information. The Mobile County school system has provided this information in a document which bears the title "Report Required by Decree Issued by U. S. District Court for the Southern District of Alabama Dated August 2, 1968, Section V.--Surveys Paragraph (a) Building and Sites".

The Office of Education Study Team did not inspect every building in the school system. A number of buildings were inspected, however, as a test check, and the team found no inaccuracies in the Mobile County Report. No report on the condition of school plants is included in this Office of Education Study. Those interested in detailed descriptions are referred to the above listed document. As for use of the facilities described, the Office of Education Study Team would point out that subsequent court orders may affect the proposed use of the facilities as set forth in the Mobile County Report.

D. Facilities and Activities

The quotation from the July 29, 1968, court order, which is given under Re Desegregation, also makes reference to facilities and activities. The March 1 1968, Fifth Circuit Decree gives the following order:

V.

SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, nonracially based rules of city, county or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the appellees shall be conducted without regard to race or color. Athletic meets and competitions and other

activites in which several schools participate shall be arranged so that formerly white and formerly Negro schools participate together.

The Office of Education Study Team was not in Mobile County during the time school was in session. As a consequence, there was no opportunity to make personal observations in the areas covered by this portion of the Court Order.

Chapter II has attempted to portray in some detail the status of desegregation in Mobile County in 1968-69 as related to court orders preceding that school year. The next two chapters of this report, dealing with finance and program of studies, also have a bearing upon present status. These three chapters, plus Chapter I, provide needed background information for Chapter V which deals specifically with the directives in the Court Order of June 3, 1969.

CHAPTER III

ANALYSIS OF FINANCING THE MOBILE COUNTY PUBLIC SCHOOLS

A. Introduction

Since the outbreak of World War II and up to the present time, the Mobile County Public Schools have been fighting an up-hill battle to provide adequate housing for a school population explosion; to provide adequate transportation in safe vehicles; to staff the schools adequately with competent, well-qualified teachers; and to provide a school program which the Mobile Board of School Commissioners and school officials desire.

Mobile County ranks at the top among the sixty-seven counties in Alabama in the percentage of local support in relation to state support. In addition to the levy of extra millage (a total of 14 mills for schools) the county has a beer tax, a tobacco tax, an oil and gas tax, and a forestry tax for school support.

In 1940-41 the enrollment in all of the schools in Mobile County was 25,577 pupils. In 1964-65, the peak year, the enrollment was 80,749 pupils. Since 1964-65 enrollment has gradually declined. During this period of time from 1940-41 through 1967-68, a total of $55,026,970 has been spent for capital outlay including acquisition of sites, new buildings, alterations of buildings, new school buses, and new equipment.

Of the $55,026,970 expended, $9,101,897 came from the two state bond issues for school construction, $5,245,036 from federal funds, and $40,680,037 from the citizens of Mobile County. During the 1968-69 school year, it was necessary to use 265 portable classrooms in various school centers.

HEW Plan of July, 1969

At the fall conference of the Alabama Association of School Administrators held in Mobile in November of 1962, Superintendent Cranford Burns told the group that of the <u>total increase</u> in public school enrollment in the entire state, 45 percent of this increase took place in Mobile County.

<u>Enrollment in Mobile County Schools 1940-41 to 1967-68</u>

Table 3-1 which follows shows how the enrollment has grown in Mobile County since the school year 1940-41.

HEW Plan of July, 1969

ENROLLMENT IN MOBILE COUNTY PUBLIC SCHOOLS

Year	Enrollment	Year	Enrollment
1940-41	25,577	1955-56	55,203
1941-42	27,037	1960-61	71,136
1942-43	29,324	1964-65*	80,749
1943-44	35,399	1965-66	80,083
1944-45	35,708	1966-67	79,469
1950-51	39,962	1967-68	76,833

* Total Growth at Peak Year—55,172

Source of Data: The Annual Financial and Statistical Reports of the Alabama State Department of Education.

TABLE 3-1

1. Analysis of Expenditure Patterns

In making this financial analysis, it was decided to use the last four completed scholastic-fiscal years in order that all figures used would be official figures.

General Overview of Expenditures 1964-65 to 1967-68

Table 3-2 which follows presents an overview of the expenditure pattern over these four years under the broad categories of Current Expense, Capital Outlay, Debt Service, and the grand total of expenditures.

The figures show a stable pattern over the period in total expenditures. The amount available for current operational expenses has been influenced by required capital expenditures and debt service. As these latter two have declined, a corresponding increase in current operational expenditures is observed. The main point to be noted from this table is that there has been no appreciable gain at any time in total funds available. In fact, total expenditures in 1967-68 were almost $450,000 under total expenditures for 1965-66.

Per Pupil Expenditures by Enrollment and Average Daily Membership 1964-65 to 1967-68.

Studies of expenditures become more meaningful when related to the individual pupil. Table 3-3 which follows breaks down the sums in Table 3-2 to expenditures per pupil enrolled and per pupil in average daily attendance.

The figures in Table 3-3 show only slight variations over the four years. The low expenditure per pupil enrolled was $356.61 and the high was $367.94.

MOBILE COUNTY PUBLIC SCHOOLS

General Overview

Year	Current Expense		Capital Outlay		Debt Service		Total	
	Amount	Per Cent	Amount	Per Cent	Amount	Per Cent	Expenditures Day Schools Amount	Per Cent
1964-1965	$ 18,257,491	62.77	$ 9,149,571	31.46	$ 1,677,417	5.77	$ 29,084,479	100.00
1965-1966	21,011,067	71.33	4,296,128	14.58	4,146,803	14.08	29,453,998	99.99
1966-1967	23,023,455	81.24	3,462,436	12.22	1,853,552	6.54	28,339,443	100.00
1967-1968	23,855,635	82.24	3,127,053	10.78	2,022,991	6.98	29,005,679	100.00

SOURCE OF DATA: ANNUAL STATISTICAL REPORTS OF THE ALABAMA STATE DEPARTMENT OF EDUCATION

TABLE 3-2

The same slight variation applied per pupil in average daily attendance. The low was $395.45 and the high was $412.11.

The most widely used figure for looking at a school system's level of support is the amount of current expense per pupil in average daily attendance. Current expenditures are annual whereas capital expenditures may show in one year and not show again for a number of years.

Current Expense Expenditures Per Pupil 1964-65 to 1967-68.

Table 3-4 presents the current expenditures per pupil in average daily attendance over the four year period.

The figures show a steady increase in the amount expended per pupil in average daily attendance. There has been an increase of almost $88 per pupil in this four year period. If the gradual decline in enrollment holds, this expenditure will continue its upward climb.

MOBILE COUNTY PUBLIC SCHOOLS

Total Expenditure Per Pupil Enrolled and Per Pupil in Average Daily Attendance

Year	Total Expense Day Schools	Total Pupils Enrolled	Expenditure Per Pupil Enrolled	Total Pupils in A. D. A.	Expenditure Per Pupil in A. D. A.
1964-1965	$ 29,084,479	80,749	$ 360.18	72,741	$ 399.84
1965-1966	29,453,998	80,083	367.79	72,261	407.61
1966-1967	28,339,443	79,469	356.61	71,663	395.45
1967-1968	29,005,679	78,833	367.94	70,384	412.11

SOURCE OF DATA: ANNUAL STATISTICAL REPORTS OF THE ALABAMA STATE DEPARTMENT OF EDUCATION

TABLE 3-3

Current Expense Per Pupil in ADA

Year	Total Current Expense	Total Average Daily Attendance	Expenditure Per Pupil in ADA
1964-65	18,257,491	72,741	$250.99
1965-66	21,011,067	72,261	290.77
1966-67	23,023,455	71,663	321.77
1967-68	23,855,635	70,384	338.94

TABLE 3-4

Comparison of Current Expense Expenditures Per Pupil in Selected School Sys[illegible]

One question that is always asked in studies such as this is "How do we compare with other school systems similar in size to ours?" Table 3-5 attempts to answer this question.

Actually there are only two other school systems in Alabama comparable to Mobile in size, but the fourth and fifth largest have been included. The figures in Table 3-5 place Mobile in a favorable position in Alabama. One of the five systems spends more and three spend less. Mobile is slightly below the average for the entire state and well below the national average.

MOBILE COMPARED WITH STATE AVERAGE

AND SELECTED SCHOOL SYSTEMS

1967-68

System	Total Current Expense	Total ADA	Expenditure Per Pupil in ADA
State Average			$343.53
Mobile	$23,855,635	70,384	336.94
Jefferson County	18,944,210	62,127	304.93
Birmingham	22,641,773	63,116	358.72
Montgomery	11,643,339	38,259	304.33
Huntsville	10,679,926	31,895	334.85
National Average (School Management - January, 1969 Issue)			465.00

Source of Data: Annual Statistical Reports of The Alabama State Department of Education.

TABLE 3-5

Analysis of Current Expense Budget

Table 3-6 presents an analysis of the current expense budget showing amounts expended under each category and the percentage relationships. The table also shows the state average for 1967-68.

A study of the figures in Table 3-5 shows again a steady pattern of consistent management of the school dollar. There are no really marked fluctuations in any of the six categories. The high percentage of the dollar denoted in the category of instruction is typical in all Alabama school systems. There has never been enough money to operate a complete program, so more of the dollars must go into instruction for salaries in order to keep teachers.

MOBILE COUNTY SCHOOL SYSTEM

Analysis of Current Expense Budget

Year 19	Total Current Expenses $	General Control Amount $	%	Instruction Amount $	%	Operation of Plant Amount $	%	Maintenance of Plant Amount $	%	Auxiliary Agencies Amount $	%	Fixed Charges Amount $	%
64-65	18,257,491	441,504	2.42	15,304,612	83.83	1,117,185	6.12	603,347	3.3	514,406	2.82	276,437	1.51
65-66	21,011,067	518,523	2.47	17,748,442	84.47	1,271,639	6.05	660,454	3.14	535,435	2.55	276,574	1.32
66-67	23,023,455	583,741	2.53	19,306,542	83.86	1,454,405	6.32	698,955	3.04	663,471	2.88	316,341	1.37
67-68	23,855,635	596,261	2.50	19,696,253	82.37	1,598,510	6.68	757,474	3.17	892,548	3.73	314,589	1.31
State Average for 1967-68			2.8		82.8		5.0		2.5		5.8		1.1

SOURCE OF DATA: ANNUAL STATISTICAL REPORTS OF THE ALABAMA STATE DEPARTMENT OF EDUCATION

TABLE 3-6

Analysis of Transportation Costs.

There is one category that requires further comment. This is the category known as Auxiliary Agencies, of which transportation is the principal element. Table 3-7 shows an analysis of current operational costs of transportation.

The figures show that a four-year average on cost per transported pupil was $19.46 per year and that the seating capacity average was 59 pupils. Thus the average operational costs of one bus was $1,148.14 per year.

The bids received by the State of Alabama this year (1969) ranged from $5,300 to $5,800 per bus. Thus each new unit of transportation added will cost from $6,648.14 to $6,948.14 during the first year of operation.

Analysis of Capital Expenditures.

Table 3-8 simply shows the breakdown of capital expenditures over the past four years. As can be seen, there are four categories for which expenditures were required.

CURRENT OPERATIONAL COSTS OF TRANSPORTATION

Year	Transportation Total Expenditure	Enrollment of all Transported	Per Transported Pupil Enrolled Per Year	Number of Buses	Seating Capacity Average	Total miles Traveled for Year	Length of Round Trip in Miles
1964-65	$405,833	24,972	$16.25	218	59	1,271,565	31
1965-66	414,192	24,101	17.18	203	59	1,209,606	33
1966-67	503,934	22,218	22.66	229	59	1,221,207	32
1967-68	460,156.75	22,094	21.73	207	59	1,168,204	31

Four Year Average Cost Per Transported Pupil Enrolled $19.46

Each New Bus 1st Year $6,648.14 - 6,946.14

Each Year for Next 8 Years at $1,148.14 plus increases in cost which cannot be calculated

For an average seating capacity of 59, the average operational cost equals $1,146.14

Cost of New Bus $5500 - 5800
(State Purchase)

TABLE 3-7

HEW Plan of July, 1969

ANALYSIS OF CAPITAL EXPENDITURES

Year	New Buildings and Sites	Alterations	New Buses	New Equipment	Total Capital Expenditures
1964-65	$6,421,307	$2,257,917	$137,911	$332,436	$9,149,571
1965-66	2,936,224	1,059,362	43,787	256,735	4,296,128
1966-67	2,254,422	807,276	46,659	354,079	3,462,436
1967-68	1,693,794	911,327	94,518	427,412	3,127,051*

* ($2 descrepancy from Table 3-2)

TABLE 3-8

C. Analysis of Sources of Revenue

Up to this point, the discussion has dealt with expenditure patterns. The appropriate step now is to determine the sources of revenue to support these expenditures.

There are four levels of government from which revenues are derived. In order of importance from the standpoint of revenue produced for Mobile County these levels are:

(1) The State

(2) The County

(3) The District

(4) The Federal Government

For all practical purposes, (2) and (3) can be combined as "local funds" for Mobile County since this is a county unit of school government. The City of Mobile is not an independent district.

Table 3-9 shows sources, amounts, and percentage distribution of revenue receipts over the past four years. State funds have increased approximately $3,100,000 over the four year period; federal funds have increased some $2,300,000; and local funds have stayed on a relatively stable plane, yet produce dollarwise the second largest amount of revenue.

Growing out of actions taken by the Alabama Legislature in Special Session during April and the first few days in May of 1969, there will be an increase in state funds for Mobile County schools for the next biennium beginning October 1, 1969. In passing revenue measures, the legislature included a number of mandates that seriously restrict local boards of education in making

decisions to fit the local situation. For example, take the case of mandated salary increases for teachers. The legislature appropriated to the Minimum Program Fund only for those teacher units earned through average daily attendance but required that all teachers employed last year must receive the same raise. This past year Mobile County employed 197 more teachers than were earned through average daily attendance. In addition to paying all of their salaries, the school system must now come forward with the raise for which no state money is received. It is estimated that this will cost Mobile County some $140,000 to $150,000 from local funds.

Non-Revenue Receipts.

Another source of money is from what is classified as non-revenue receipts which are itemized in Table 3-10. These are receipts which either reduce the assets or increase the indebtedness of a school system and flow into the treasury on a non-receiving basis. There seems to be one exception to this general rule here in Mobile County. Under the "Others" category, interest on investments produced $212,788, $168,915, $204,717, and $249,922 for the four years included in this study.

Bonding Capacity of Mobile County Schools.

As of September 30, 1969, the bonded debt of the Mobile County Public School System will be $33,728,985.85. Of this amount, $25,155,000 is for principal and $8,573,985.85 is for interest. These bonds are secured by the 3-mill county tax and the 5-mill special district tax. They will be retired in 1987.

Metropolitan Mobile
September 27, 1968

Schools	Grades	Pupil Membership - White	Negro	Total	Pupil Transported	Capacity Permanent Facilities	Number of Portables
32 Shepherd	1 - 6	453	43	496	66	544	0
33 Dodge	1 - 6	678	54	732	143	816	0
34 Fonde	1 - 6	715	11	726	0	850	0
35 Austin	1 - 6	391	22	413	0	408	0
36 Dickson	1 - 6	772	1	773	0	816	0
37 Hillsdale	1 - 6	0	586	586	0	510	4
38 Orchard	1 - 5	759	2	761	150	816	0
39 Will	1 - 5	678	0	678	0	816	0
40 Forest Hill	1 - 5	604	0	604	0	578	1
41 Whistler	1 - 6	251	247	498	0	680	0
42 Thomas	1 - 6	210	114	324	0	272	3
43 Indian Springs	1 - 6	535	11	546	282	408	4
44 Eight Mile	1 - 6	344	78	422	163	340	4
TOTALS		13,886	14,256	28,142	1,160	28,560	74

TABLE 2-4b

NON-GRADED SCHOOL FOR TRAINABLE PUPILS, AGES, PUPIL MEMBERSHIP BY RACE, NUMBER PUPILS TRANSPORTED, NUMBER PERMANENT CLASSROOMS, NUMBER PORTABLES, MOBILE COUNTY, September 27, 1968

School	Ages	Pupil Membership			Number Pupils Transported	Number Permanent Classrooms	Number of Portables
		White	Negro	Total			
Augusta Evans	6 - 18	76	86	162	142	12	2
Totals		76	86	162	142	12	2

Table 2 - 2

SUMMARY
MOBILE COUNTY SCHOOLS
MOBILE COUNTY, September 27, 1968

	Pupil Membership			Number Pupils Transported	Capacity Permanent Facilities	Number of Portables
	White	Negro	Total			
Rural Schools	15,186	3,837	19,023	11,968	18,492	94
Metropolitan Senior High	8,458	7,660	16,118	2,029	14,674	48
Metropolitan Junior High	6,386	5,590	11,976	1,674	11,686	48
Metropolitan Elementary	13,886	14,256	28,142	1,160	28,560	73
School for Trainable Pupils	76	86	162	142	162*	2
Totals	43,992	31,429	75,421	16,973	73,574	265

Percent White Pupil Membership - 58.3
Percent Negro Pupil Membership - 41.7

*Capacity of Augusta Evans is represented by the current total enrollment of Trainable Pupils.

HEW Plan of July, 1969

According to officials in the office of the Board of School Commissioners, there is now approximately $10,000,000 leeway for borrowing. The borrowing capacity will fluctuate with changing interest rates.

For additional revenue, consideration could be given to Amendment 202 of the Constitution of Alabama, which permits any county school system in Alabama to levy a special school tax not exceeding fifty cents on each one hundred dollars of taxable property in addition to all other taxes now levied or that may hereafter be levied. Thus the citizens of Mobile County could, if they so wished, levy up to five additional mills of property tax for school support in this county.

REVENUES AND RECEIPTS

Year	State Funds Amount	State Funds Percent	Federal Funds Amount	Federal Funds Percent	Local Funds Amount	Local Funds Percent	Total Revenue Receipts Amount
1964-65	$12,459,338	58.75	$1,320,936	6.22	$7,424,926	35.02	$21,205,200
1965-66	13,666,403	54.06	3,499,567	13.84	8,114,531	32.09	25,280,501
1966-67	15,344,829	57.49	3,513,325	13.16	7,833,705	29.35	26,691,859
1967-68	15,551,365	57.41	3,664,408	13.53	7,871,313	29.06	27,087,066

TABLE 3-9

NON-REVENUE RECLIPTS

Year	Insurance Adjustments	Sale of Property	Sale of School Warrants	Refunds	Others	Total
1964-65	$63,766	$23,555	$6,390,000	$20,540	$286,781	$6,784,6
1965-66	67,875	37,123		277	207,519	312,7
1966-67	132,357	32,796	5,400,000	1,479	225,516	5,792,1
1967-68	8,557	120,624		5,868	313,226	448,2

TABLE 3-10

CHAPTER IV

Program of Study

The purpose of this chapter is to determine the extent to which course offerings should affect assignment of pupils. In no way is there an attempt to measure the quality of the total school program or determine the effectiveness of the curriculum. Some schools, however, may need to change their course offerings in order to meet the needs of new student body composition, and some pupils may need to attend schools outside their attendance zones to obtain the courses they need.

The basic guidelins for the Mobile County schools to follow in their efforts to meet the needs of the students in their schools is a directive from the superintendent, dated November 23, 1965. Two significant statements from the directive read as follows:

1. Guide for instructional programs:

   The State Course of Study shall be followed as a guide for the instructional program in the Mobile Public Schools except as otherwise approved by the Superintendent. Significant departures from Courses of Study developed for the Mobile Public Schools also shall be approved by the Superintendent.

2. Credit Courses:

   All credit courses offered in the secondary schools which are not described and approved in the State Course of Study shall be approved by the Superintendent and reported to the Board.. Course applications submitted for the first time shall be presented to the Superintendent not later than March 1, thus allowing sufficient time to facilitate student counseling and student registration for courses to be offered the following year. The need for said courses shall be firmly established by furnishing an informational report on each course r commended, including purposes of the course, the major units or topics to be treated and the ages, the grades and the types of students to be served. It shall not be the purpose of

this policy to discourage the planning and offering of courses not described in the State Course of Study. To the contrary, local school faculties shall be encouraged to expand course offerings to meet the multiplicity of needs, abilities and achievement backgrounds of secondary youth.

As a matter of practical school administration, the Mobile County Schl system offers each school the opportunity to select courses for credit, no-credit, and special interest provided there is an identified need, sufficient number of interested students, adequate facilities, qualified teaching personnel, and provisions for materials and equipment. It is also an administrative procedure to delete all elected courses with insufficient demand to warrant the use of space, time, and staff.

A. Elementary Schools

The program of study for the elementary schools in the Mobile County system is constant. Teachers are encouraged to exercise their ingenuity and creativity in helping the children in the learning process. Course of study materials are conceived and developed in the form of resource units. The resource units embrace most of the major topics treated in the State adopted textbooks. In addition to the units, the teaching of short subjects is encouraged, particularly in grades 4 - 6 in social studies and science. Across the board, grouping of students based on needs and achievement background is practiced in the elementary schools.

The directive from the Superintendent indicates that the greatest priority on the elementary level should be given to reading. The general subjects covered in the elementary school curriculum are:

1. Language arts, including reading, writing, spelling, English, grammar and listening;
2. Social studies, including history, geography, and government;
3. Arithmentic;
4. Science;
5. Art and music;
6. Health and physical education.

The 1965 directive from the Superintendent states that the major purpose of the Mobile County elementary schools is to educate boys and girls for good citizenship.

B. Junior High Schools

According to the Superintendent's directive, the junior high schools are allowed to disregard grade levels in programming instruction in the basic skills, which indicates that limited grouping based on achievement background and individual interests is practiced at this level. The following courses are offered:

1. English - 7
2. Basic English - 7
3. English - 8
4. Basic English - 8
5. Social studies - 7
6. Social studies - 8
7. Basic social studies - 8
8. Science - 7
9. Science - 8
10. P. E. - 7
11. P. E. - 8
12. Mathematics - 7
13. Basic mathematics - 7
14. Mathematics - 8
15. Basic mathematics - 8
16. Algebra - 8

17. Home economics - 7 & 8
18. Exploratory industrial arts
19. French - 7
20. French - 8
21. Spanish - 7
22. Spanish - 8
23. General music - 7 & 8
24. Chorus
25. Band
26. Art - 7 & 8
27. Reading - 7 & 8
28. Creative writing - 7
29. Creative writing - 8
30. Spanish I - 9
31. Art I - 9
32. Woodworking I - 9
33. Metal working I - 9
34. General business - 9
35. Business arithmetic - 9

Not all of the above listed courses are offered in all schools. Table 4-1 lists those courses which are offered on a discretionary basis and indicates the schools which offered these courses in 1968-69.

HEW Plan of July, 1969

JUNIOR HIGH SCHOOLS
SPECIAL COURSES
1968-1969

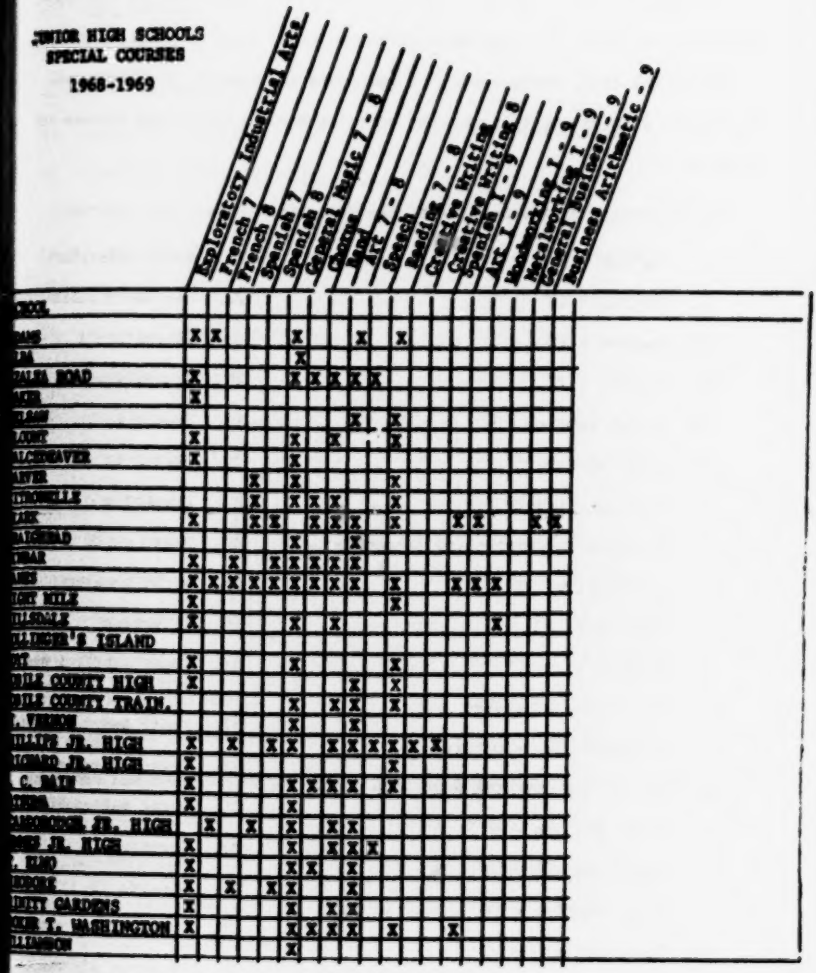


TABLE 4-1

HEW Plan of July, 1969

C. Senior High Schools

All required high school courses can be taken regardless of the school attended. However, for some specialized courses, such as those in the area of industrial arts, where expensive equipment and special facilities are necessary, students must attend the school where the requested courses are offered.

At the senior high school level the following courses are offered:

1. English - 9
2. English - 10
3. English - 11
4. English - 12
5. Social studies - 9
6. World history
7. American history
8. American government and economics
9. Mathematics - 9
10. Algebra I
11. Science 9
12. Basic home economics
13. Advanced home economics
14. Health and physical education 9-12
15. Basic English - 9
16. Basic English - 10
17. Basic English - 11
18. Basic English - 12
19. Advanced English
20. Creative writing and English composition
21. World literature
22. Western civilization
23. Journalism I
24. Journalism II
25. Speech I
26. Speech II
27. Dramatics
28. Basic world history
29. World geography
30. Psychology
31. Home, family & personal problems
32. Basic American history
33. Basic American government and economics
34. Basic mathematics - I
35. Geometry
36. Algebra II
37. Introductory analysis
38. Advanced placement mathematics
39. Advanced general mathematics (basic)

40. Advanced general mathematics
41. Basic biology I
42. BSCS biology I
43. General biology I
44. BSCS biology II
45. Chemistry (modern)
46. Chemistry (chem. study)
47. Chemistry II
48. Physics (mod.)
49. Physics (PSSC)
50. Advanced general science
51. Physical science
52. Cosmetology I
53. Cosmetology II
54. Drafting I
55. Drafting II
56. Fisheries
57. Basic bookkeeping
58. Bookkeeping I
59. General business
60. Business arithmetic
61. Business communication
62. Business law
63. Typewriting I
64. Typewriting II
65. Personal typewriting
66. Office practice
67. Shorthand I
68. Driver education
69. Art I
70. Art II
71. Art III
72. Crafts
73. Art appreciation
74. Band
75. Chorus
76. Music appreciation
77. Creative music
78. Music theory
79. Orchestra
80. Woodworking I
81. Woodworking II
82. Woodworking III
83. Metal working I
84. Metal working II
85. Metal working III
86. Mechanical drawing I
87. Mechanical drawing II
88. Mechanical drawing III
89. Special home economics
90. Family living
91. Restaurant management
92. Agriculture I
93. Agriculture II
94. Agriculture III
95. Auto mechanics I

96. Auto mechanics II
97. French I
98. French II
99. French III
100. French IV
101. German I
102. German II
103. German III
104. German IV
105. Latin I
106. Latin II
107. Latin III
108. Latin IV
109. Spanish I
110. Spanish II
111. Spanish III
112. Spanish IV
113. Shorthand II
114. Notehand
115. Off. occ. prep I
116. Off. occ. prep. II
117. Off. occ. prep. III
118. Off. occ. coop.
119. Machine shop I
120. Machine shop II
121. Radio & T.V. I
122. Radio & T.V. II
123. Tailoring I
124. Tailoring II
125. Dist. education (prep)
126. Distributive educatio
127. Ind. coop. training
128. Office machine

Courses numbered 1 through 14 are offered in all high schools. Courses numbered 15 through 128 are offered only at the high schools indicated by a check in Tables 4 - 2.

HEW Plan of July, 1969

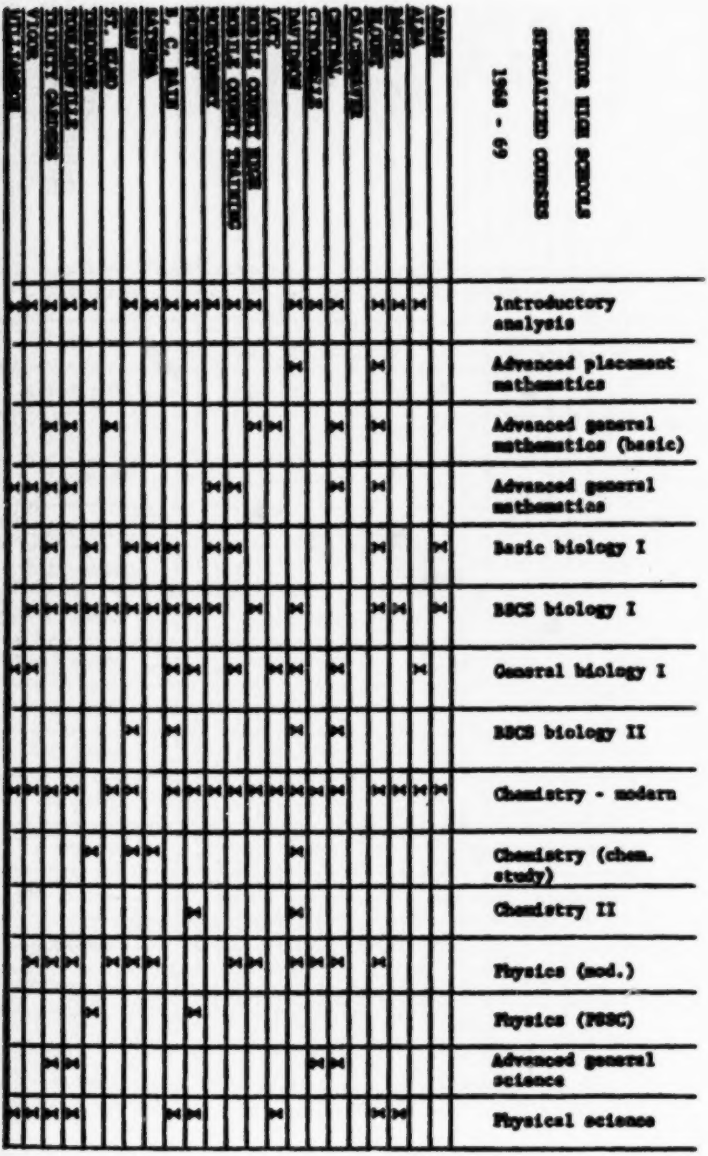
SENIOR HIGH SCHOOLS SPECIALIZED COURSES 1968 - 69	ADAMS	ALMA	BAKER	BLOUNT	CALCEDEAVER	CENTRAL	CLINTONDALE	DAVIDSON	LOTT	MOBILE COUNTY HIGH	MOBILE COUNTY TRAINING	MONTGOMERY	MURPHY	P. C. HAIG	SAMSULA	SHAW	ST. ELMO	THEODORE	TOULMINVILLE	TRINITY GARDENS	VIGOR	WILKINSON
Basic English - 9		X		X	X	X	X	X	X	X	X			X	X	X	X	X		X		X
Basic English - 10				X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X
Basic English - 11		X			X	X	X	X	X	X	X			X	X	X	X	X	X		X	X
Basic English - 12		X		X	X	X	X	X	X	X	X			X	X	X	X	X	X		X	X
Advanced English		X						X					X		X	X					X	
Creative writing and English composition								X					X		X				X			
World literature		X			X			X		X		X	X	X		X		X		X		
Western civilization		X																				
Journalism I		X			X	X		X				X	X	X	X			X	X			
Journalism II				X										X								
Speech I	X	X		X	X	X	X	X				X	X	X	X	X	X	X	X			
Speech II		X			X								X					X			X	

HEW Plan of July, 1969

SENIOR HIGH SCHOOLS SPECIALIZED COURSES 1968 - 69	Dramatics	Basic world history	World geography	Psychology	Home, family and personal problems	Basic American history	Basic American government and economics	Basic mathematics - I	Geometry	Algebra II				
ADAMS									X					
ALBA			X	X				X	X	X				
BAKER				X					X	X				
BLOUNT		X		X	X	X	X	X	X	X				
CALCEDEAVER														
CENTRAL	X	X		X	X			X	X	X				
CITRONELLE	X			X	X			X	X	X				
DAVIDSON				X	X			X	X	X				
LOTT			X		X	X	X		X	X				
MOBILE COUNTY HIGH		X				X	X	X	X	X				
MOBILE COUNTY TRAINING	X			X	X	X		X	X	X				
MONTGOMERY			X	X					X	X				
MURPHY	X		X	X	X			X	X	X				
B. C. RAIN			X	X		X		X	X	X				
SATSUMA		X		X	X	X	X	X	X	X				
SHAW				X	X				X	X				
ST. ELMO			X			X	X		X	X				
THEODORE		X		X	X	X	X	X	X	X				
TOULMINVILLE	X		X	X			X		X	X				
TRINITY GARDENS				X					X	X				
VIGOR	X		X						X	X				
WILLIAMSON		X	X	X		X	X	X	X	X				

TABLE 4-2a

HEW Plan of July, 1963



HEW Plan of July, 1969

SENIOR HIGH SCHOOLS SPECIALIZED COURSES 1968-69	French I	French II	French III	French IV	German I	German II	German III	German IV	Latin I	Latin II	Latin III	Latin IV	Spanish I	Spanish II	Spanish III	Spanish IV
ADAMS	X	X														
ALBA	X	X														
BAKER													X	X		
BLOUNT	X	X			X	X							X	X		
CALCEDEAVER																
CENTRAL	X	X	X										X	X		
CITRONELLE													X	X		
DAVIDSON	X	X	X		X	X	X		X	X	X	X	X	X	X	
LOTT		X														
MOBILE COUNTY HIGH													X	X		
MOBILE COUNTY TRAINING	X	X														
MONTGOMERY													X	X		
MURPHY	X	X	X	X	X	X	X		X	X	X		X	X	X	X
B. C. RAIN	X												X	X		
SATSUMA	X	X											X	X		
SHAW	X	X			X								X	X		
ST. ELMO	X	X											X			
THEODORE	X	X											X	X		
TOULMINVILLE	X	X											X	X		
TRINITY GARDENS	X	X											X	X		
VIGOR	X	X			X	X			X	X			X	X		
WILLIAMSON	X	X											X	X		

TABLE 4-2c

HEW Plan of July, 1969

SENIOR HIGH SCHOOLS

SPECIALIZED COURSES

1968 - 69

	WILLIAMSON	VIGOR	TRINITY GARDENS	TOULMINVILLE	THEODORE	ST. ELMO	SHAW	SATSUMA	B. C. RAIN	MURPHY	MONTGOMERY	MOBILE COUNTY TRAINING	MOBILE COUNTY HIGH	LOTT	DAVIDSON	CITRONELLE	CENTRAL	CALCEDEAVER	BLOUNT	BAKER	ALBA	ADAMS
Driver education		X		X	X		X		X	X					X		X		X			
Art I		X		X	X	X	X	X	X	X	X	X	X		X		X		X			
Art II		X		X	X		X	X	X	X		X	X		X				X			
Art III									X	X					X							
Crafts		X					X															
Art appreciation	X																					
Band	X	X	X	X	X	X		X	X	X	X	X		X	X	X	X		X	X	X	
Chorus	X	X	X	X	X	X	X	X	X		X	X		X	X		X		X		X	
Music appreciation				X						X							X					
Creative music										X												
Music theory				X													X		X			
Orchestra	X	X					X								X							
Woodworking I	X	X	X	X	X	X	X	X	X	X	X	X		X	X		X		X	X	X	X
Woodworking II		X		X	X		X	X	X	X	X	X		X	X	X	X		X	X		X
Woodworking III					X						X			X	X							

HEW Plan of July, 1969

SENIOR HIGH SCHOOLS
SPECIALIZED COURSES
1968 - 69

	ADAMS	ALMA	BAKER	BLOUNT	CALCEDEAVER	CENTRAL	CITRONELLE	DAVIDSON	LOTT	MOBILE COUNTY HIGH	MOBILE COUNTY TRAINING	MONTGOMERY	MURPHY	B. C. RAIN	SATSUMA	SHAW	ST. ELMO	THEODORE	TOULMINVILLE	TURNEY CALHOUN	VIGOR	VILLANOW
Metal working I	X			X		X		X				X		X		X	X	X			X	
Metal working II				X		X		X				X				X		X			X	
Metal working III												X										
Mechanical drawing I	X	X	X	X				X				X	X	X	X	X		X		X	X	X
Mechanical drawing II								X				X	X	X	X	X					X	
Mechanical drawing III								X													X	
Special home economics		X	X					X	X	X	X	X	X		X	X				X	X	
Family living							X	X								X						
Restaurant management																					X	
Agriculture I							X		X													
Agriculture II							X															
Agriculture III							X															
Auto mechanics I						X							X								X	
Auto mechanics II						X															X	

TABLE 4-2e

HEW Plan of July, 1969

SENIOR HIGH SCHOOLS

SPECIALIZED COURSES

1968 - 69

	ADAMS	ALBA	BAKER	BLOUNT	CALCEDRAVER	CENTRAL	CITRONELLE	DAVIDSON	LOTT	MOBILE COUNTY HIGH	MOBILE COUNTY TRAINING	MONTGOMERY	MURPHY	B. C. RAIN	SATSUMA	SHAW	ST. ELMO	THEODORE	TOULMINVILLE	TRINITY GARDENS	VIGOR	WILLIAMSON
Cosmetology I																					X	
Cosmetology II																					X	
Drafting I													X								X	
Drafting II																					X	
Fisheries		X																				
Basic bookkeeping					X	X	X	X					X		X				X		X	
Bookkeeping I				X		X	X	X				X	X		X		X		X		X	
General business			X				X						X	X	X				X			
Business arithmetic		X	X		X	X	X	X					X	X	X				X	X	X	
Business communication						X	X	X					X		X						X	
Business law							X	X					X		X						X	
Typewriting I		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Typewriting II								X				X	X	X	X						X	X
Personal typewriting							X				X										X	
Office practice																						
Shorthand I					X			X				X	X	X	X		X				X	

HEW Plan of July, 1969

SENIOR HIGH SCHOOLS SPECIALIZED COURSES 1968-1969	Shorthand II	Notehand	Off. Occ. Prep. I	Off. Occ. Prep. II	Off. Occ. Prep. III	Off. Occ. Coop.	Machine Shop - I	Machine Shop II	Radio & T.V. I	Radio & T. V. II	Tailoring I	Tailoring II	Dist. Education (Pre)	Distributive Education	Ind. Coop. Training	Office Machine
Adams			X	X												
Alba			X	X												
Baker			X	X	X											
Blount			X	X	X											
Calcedeaver														X		
Central			X	X	X	X			X	X	X	X		X	X	
Citronelle			X	X	X											
Davidson	X		X	X		X								X		
Lott			X	X	X											
Mobile County High																
Mobile County Training			X	X	X										X	
Montgomery			X	X	X											
Murphy	X	X	X	X		X	X	X	X	X				X	X	X
B. C. Rain			X	X	X								X	X		
Satsuma			X	X	X								X	X		
Shaw			X	X		X										
St. Elmo			X	X												
Theodore			X	X	X									X		
Toulminville			X	X	X											
Trinity Gardens			X	X												
Vigor		X	X	X	X	X			X	X				X	X	
WILLIAMSON			X	X												

TABLE 4-2g

D. Program for Exceptional Children

The special needs of handicapped children are served by a Special Education Program designed to offer appropriate education experiences to the Trainable Mentally Retarded, Educable Mentally Retarded, Hospital and Homebound, Deaf and Hearing Impaired, Speech Impaired, Visually Limited, and Dyslexic children. Referrals are made to the Child Guidance Center for complete evaluation to determine proper placement. New classes are established in appropriate schools on the basis of need for special service. See Table 4-3 for a summary of the type and location of all Special Classes during the 1968-69 school year.

E. Adult Education

In addition to the educational program for grades 1 - 12, Mobile County has a number of programs for adults, as follows:

I. Adult Basic Education. Classes in Adult Basic Education have been carried on under the supervision of the Mobile County Board of Education for the last three years with funds from Title III, Public Law 89-750. The purpose of the Adult Basic Education Program is to provide an opportunity for basic education to all persons over eighteen years of age whose lack of educational skills (grades 1 - 8) constitutes a substantial impairment of ability to adapt to and function successfully within contemporary society.

During the 1968-69 school years, forty classes were in operation with a total enrollment of 542 students. Classes met four hours a week during the evening hours. There is no tuition charged, and all supplies and materials are furnished.

HEW Plan of July, 1969

MOBILE COUNTY
SPECIAL EDUCATION - 1968-69

School	Type Class	School	Type Class
Adams	1 EMR Sec. 1 EMR Elem.	Hall	1 EMR Elem.
Alba	1 EMR Elem.	Hillsdale	1 EMR Elem.
		Hollingers Is.	1 EMR Elem.
Azalea Rd.	1 EMR Jr. High	Lott	1 EMR Elem.
Baker	1 EMR Jr. High 1 EMR Elem.	Maryvale	2 EMR Elem.
Blount	1 EMR Sec. 1 EMR Jr. High	Mo. Co. Trng.	1 EMR Jr. H 1 EMR Sec.
So. Brookley	1 EMR Elem.	Murphy	3 EMR Sec.
Burroughs	1 EMR Elem.	Owens	2 EMR Elem.
Caldwell	2 EMR Elem.	Palmer	1 EMR Elem.
Central	2 EMR Sec.	Phillips	1 EMR Jr. H
Child Guidance	2 Dyslexia 1 Deaf/Hard of Hearing 1 Hospital 4 Homebound 4 Speech Ther.	Prichard	1 EMR Jr. H
		Rain	1 EMR Jr. H 1 EMR Sec.
		Saraland	1 EMR Elem.
Citronelle	1 EMR Elem. 1 EMR Sec.	Satsuma	1 EMR Sec.
Clark	2 EMR Jr. High	Semmes	1 EMR Elem. 1 EMR Jr. H
Craighead	1 EMR Elem.	St. Elmo	1 EMR Sec.
Crichton	1 EMR Elem.	Theodore	1 EMR Sec.
Davis	1 EMR Elem.	Toulminville	1 EMR Sec.
Dickson	1 EMR Elem.	Trinity Gardens	1 EMR Sec.
Dunbar	2 EMR Jr. High	Vigor	2 EMR Sec.
Eanes	2 EMR Jr. High	Washington	1 EMR Jr. H
Emerson	1 EMR Elem.	Whistler	5 EMR Elem.
Evans	1A EMR	Whitley	1 EMR Elem.
Fonvielle	1 EMR Elem.	Williamson	2 EMR Sec.
Forest Hill	2 EMR Elem.	Wilmer	1 EMR Elem.
Grant	2 EMR Elem.	Woodcock	1 EMR Elem.

TABLE 4-3

The instruction is designed with emphasis on the communication skills of reading, speaking, and listening, and the competitive skills of good buying, health, human relations, and home and family living. Applicants are placed according to broad salary brackets, such as $3,000, $5,000, $7,000, and over. Undereducated adults who are classified in grades 1 - 4 are given priority. However, the school system is concerned with all grades, 1 - 8. Check Table 4-4 for the enrollment of basic adult education students by schools.

2. Work Incentive Now. The Work Incentive Now Program (W.I.N.) is carried on jointly by the Mobile Public School System and the Alabama State Department of Industrial Relations with funds from the Social Securities Act, Part IV, Title C, 1967. It was implemented in December of this year under a contract period ending in May. Due to the success of the program, however, the contract period has been extended over the summer months, and it is anticipated that the program will be continued during the 1969-70 school year.

The purpose of the program is to provide educational experiences for persons on welfare to the end that the cycle of dependency can be broken. The course of study includes orientation to the world of work, grooming, hygiene, job interviewing techniques, money management, reading, mathematics, communication skills, and a program of study leading to the successful completion of the general education development test and a certificate of high school equivalency.

HEW Plan of July, 1969

MOBILE COUNTY

ADULT BASIC EDUCATION
JANUARY 1969

MONTHLY ATTENDANCE REPORT

SCHOOL	ENROLLMENT	% ATT.	SCHOOL	ENROLLMENT	%
Adams	10	70	Grant	11	
"	15	70	"	12	
"	14	87	"	14	
Belsaw	12	72	"	11	
Brazier	16	88	"	12	
"	19	87	"	12	
Burroughs	5	56	Hall	11	
Caldwell	14	88	"	17	
"	10	74	Hillsdale	17	
"	13	86	Lott	11	
"	10	77	Murphy	16	
Carver	10	81	Owens	15	
"	10	88	Palmer	11	
"	1	83	Prichard	20	
D. Union	11	79	Robbins	15	
Dixon	12	92	"	13	
Emerson	20	89	Thomas	15	
Gorgas	16	62	"	11	
"	16	84	Whitley	19	
"	14	78	"	20	

Total Class. . . . . .
Total Enrollment . . . . . .
Total Percentage of Attendance .

TABLE 4-4

HEW Plan of July, 1969

3. Adult and Veterans Schools. The Adult and Veterans Division housed at Murphy High School offers prerequisite courses necessary to enter high school, high school courses leading to high school general education development certificates, and special interest courses based on demand in the community. It is operated on a self-sustaining basis from tuition fees. It is operated after regular school hours and for the most part uses part-time teachers.

7. Observations

From a consideration of the course offerings, the following observations may be made for the three levels of public education:

Elementary Schools: Since the elementary program is constant in all schools, the course offerings should in no way affect assignment of pupils.

Junior High Schools: At the junior high level, course offerings are basically similar except for the areas of language and industrial arts. Instituting new language programs would not require special facilities. Special facilities would be required for industrial arts.

Senior High Schools: At the senior high school level, course offerings are more varied. Of the 128 courses offered at the secondary level, 115 may be considered specialized courses. Most of these courses, with the exception of those in the areas of industrial arts and extensive commercial preparation and other vocational courses, can be instituted without the acquisition of special facilities or expensive

equipment. Except for courses in these three areas, no unusual difficulties should be encountered in instituting specialized offerings to meet the needs of desegregated student bodies. The only conditions to be met would be the normal observation of the superintendent's directives, as quoted on pages 1 and 2.

It is evident from a study of Table 4-2 that in the larger secondary schools great differences exist between the predominantly white and predominant Negro schools in the number of courses offered. The school system will undoubtedly wish to give special attention to all schools in determining whether the needs of students are being fully met with the courses now offered in each center. School personnel will also wish to reassure themselves that all students and their parents are fully aware of the programs requiring special facilities which are available in the school system. The faculty and administrative committees suggested in Chapter VI might be appropriate school groups to examine the program of study.

HEW Plan of July, 1969

CHAPTER V

DESEGREGATION PLANS

A. Desegregation Plan for 1969-70 For Rural Schools of Mobile County

The proposals for the operation of the rural schools of Mobile County are shown on separate maps for senior high, junior high, and elementary schools. The zone lines shown on the maps are tentative lines and may be adjusted to building capacity provided the racial composition of each school is not sufficiently changed. The capacity of the permanent facilities, the number of portables required, and the approximate number of pupils by race are shown on the Composite Building Information form found on pages 87 and 88.

Alba (1 through 12): The Alba attendance area, as indicated on the accompanying maps, has a student population of approximately 1395 white students and 222 Negro students in grades 1-12.

Mobile Co. High (7-12): The Mobile County High School, as indicated on the accompanying maps, has a student population of approximately 512 white students and 231 Negro students in grades 7-12.

Theodore High (9-12): The Theodore High School, as indicated on the accompanying maps, has a student population of approximately 1083 white students and 219 Negro students in grades 9-12.

Baker High School (1-12): The Baker High School, as indicated on the accompanying maps, has a student population of approximately 962 white students and 62 Negro students in grades 1-12.

Montgomery High School (9-12): The Montgomery High School, as indicated on the accompanying maps, has a student

population of approximately 733 white students and 28 Negro students in grades 9 - 12.

Citronelle High School (6-12): The Citronelle School, as indicated on the accompanying maps, includes the students in grades 6 - 8 from the Belsaw area and the grade 6 - 8 students from the Calcedeaver area. The student population would be approximately 898 white students and 421 Negro students.

Satsuma High School (8-12): The Satsuma High School, as indicated on the accompanying maps, has a student population of approximately 1,056 white students and 287 Negro students in grades 8 - 12.

St. Elmo (7-8): This attendance area will serve approximately 432 white students and 71 Negro students in grades 7 and 8.

Burroughs (6-8): This attendance area will serve approximately 301 white students and 176 Negro students in grades 6-8.

Semmes (1-8): This attendance area will serve approximately 955 white students and 26 Negro students in grades 1 - 8.

Calcedeaver: This school will be closed. Grades 6-8 will attend Citronelle and grades 1-5 will attend the Belsaw-Mt. Vernon complex.

Belsaw-Mt.Vernon (1-5): Belsaw and Mt. Vernon will house all students in the Calcedeaver and Belsaw-Mt. Vernon area. The student population

has approximately 324 white students and 354 Negro students. Belsaw and Mt. Vernon would be paired on a temporary basis. A new school serving an expanded attendance zone as shown on the accompanying maps should be constructed to replace these facilities.

Adams (1-7): This attendance area will serve approximately 812 white students and 296 Negro students in grades 1-7.

Dixon (1-6): This attendance area will serve approximately 268 white students and 125 Negro students in grades 1-6.

Grand Bay (1-6): This attendance area will serve approximately 617 white students and 210 Negro students in grades 1-6.

Davis (1-5): This attendance area will serve approximately 382 white students and 375 Negro students in grades 1-5.

Griggs (1-6): This attendance zone will serve approximately 842 white students in grades 1-6. It should be possible to assign Negro students from the Davis-Burroughs area to Griggs. Pupil locator maps were not available for the rural area, so this line could not be established.

Bellingers Island (1-6): This attendance area will serve approximately 350 white students and 8 Negro students in grades 1-6. It should be possible to assign Negro students from the Davis-Burroughs area to this school, but in the absence of pupil locator maps, zone lines could not be established.

Meadowlake (1-6): This attendance area will serve approximately 351 white students and 62 Negro students in grades 1-6.

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Wilmer (1-6): This attendance area will serve approximately 328 white students and 51 Negro students in grades 1-6.

Tanner-Williams (1-6): This attendance area will serve approximately 348 white students and 8 Negro students in grades 1-6.

Lott (1-5): This attendance area will serve approximately 466 white students and 115 Negro students in grades 1-5.

Saraland (1-5): This attendance area will serve approximately 713 white students and 63 Negro students in grades 1-5.

Lee (1-5): This attendance area will serve approximately 675 white students and 98 Negro students in grades 1-5.

Dauphin Island: This school is considered too small for effective operation. The school will be closed for 1969-70. The students will be transferred to Alba school.

Dawes-Union: The name of the school serving this area is designated on the map as Meadowlake.

COMPOSITE BUILDING INFORMATION FORM

MOBILE RURAL AREA

Name of School	Grades	Capacity		Students			Staff			Estimated Portables
		Perm.	W. Ports.	W	N	T	W	N	T	
Alba	1 - 12	1470	1620	1395	222	1617				5
Mobile County High	7 - 12	700	760	512	231	743				2
Theodore	9 - 12	1400		1083	219	1302				0
Baker	1 - 12	806	1016	962	62	1024				7
Montgomery	9 - 12	784		753	28	781				0
Citronelle	6 - 12	1380		898	623	1521				5
Satsuma	8 - 12	1036	1336	1056	287	1343				7
St. Elmo	7 - 8	644		432	71	503				0
Burroughs	6 - 8	612		391	176	567				0
Semmes	1 - 8	1058		955	26	981				0
Calcedeaver			CLOSE							0
Adams	1 - 7	1160		812	296	1108				0
Dixon	1 - 6	408		268	125	393				0
Grand Bay	1 - 6	850		617	210	827				0

TABLE 5-1

COMPOSITE BUILDING INFORMATION FORM

MOBILE RURAL AREA

Name of School	Grades	Capacity		Students			Staff			Estimated Portables
		Perm.	W. Ports	W	N	T	W	N	T	
Davis	1 - 5	850	1000	582	375	957				3
Griggs	1 - 6	544	844	842	0	842				10
Hollinger's Island	1 - 6	390		350	8	358				0
Meadowlake	1 - 6	204	324	351	62	413				4
Wilmer	1 - 6	408		328	51	379				0
Tanner-Williams	1 - 6	476		348	8	356				0
Lott	1 - 5	816		466	115	581				0
Belaire-Mt. Vernon	1 - 5	464	674	324	354	678				7
Forestland	1 - 5	850		713	63	776				0
Lee	1 - 5	850		675	98	773				0
TOTAL		18,164	19,660	15,113	3,710	18,823				45

TABLE 5-1a

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B. Desegregation Plans for the Metropolitan Secondary Schools

1. Northern Sector: Senior High School

The accompanying maps give the approximate attendance zones discussed in the narrative below.

In grades 9 through 12, for the Northern Sector of the Metropolitan area, there are approximately 4,870 students. Of these, 1,908 are white and 2,962 are Negro. The most equitable approach to desegregation in this area would be to establish one central senior high school (9 through 12) complex. This can be done by utilizing Vigor, Bienville, Blount and Carver. These four facilities are located on two large sites only two blocks apart. The total capacity of these four buildings is 5,280, which will comfortably house the 4,870 students, grades 9 through 12, who reside in this expanded attendance zone.

It is recommended that the school officials make every effort to acquire a corridor connecting the two school sites, which might be used for future expansion or as additional playground and extracurricular activities space. One overhead walkway over the railroad could be constructed near the end of July Street.

2. Northern Sector: Junior High School

The most equitable plan for eliminating discrimination at the junior high school level, grades 6 through 8, for this northern sector would be to house all 8th grade students residing in this sector in the present Clark Junior High facility. This would include 948 Negro students and 531 white students, for a total of 1,479.

Three centers would serve grades 6 and 7, Trinity Gardens Junior and Senior High Schools, Prichard Junior High School, and Mobile County Training

HEW Plan of July, 1969

Junior and Senior High Schools. The capacity of these three facilities is approximately 3,080, and would comfortably house the 3,011 6th and 7th grade students residing in the sector. Of these, 1,959 are Negro and 1,052 are white. Attendance areas for each school would be established to run from northwest to southeast so that each school would be filled to its approximate capacity.

3. Central Sector: Senior High School

This plan projects two high school attendance areas to serve the 4,575 students in Grades 10 through 12 residing in this area. Murphy, with a capacity of 2,900, would house 1,360 Negro students and 1,440 white students. A single administrative facility composed of Williamson-Craighead, with a capacity of 2,062, would house the remaining 767 Negro students and 1,008 white students. The 1,045 students in the Toulminville area are reassigned so that approximately 200 attend Murphy, 340 attend Davidson, and 305 attend Shaw, beginning with the school year 1970-71. In 1969-70, however, approximately 685 11th and 12th grade pupils are assigned to Toulminville and the approximately 360 10th grade pupils as follows:
120 to Shaw, 240 to Davidson.

Additional construction should increase facilities in the Shaw-Davidson areas to absorb all the students of the Toulminville area except those assigned to Murphy. There should be sufficient construction at Shaw and Davidson so that the attendance area for these two schools can be extended into the Mobile Training School area.

4. Central Sector: Junior High School

Three junior high school attendance areas will be established in this sector to house all students in grades 6 through 9. Students living in the southernmost portion of the sector will attend Eanes and Woodcock. Woodcock should probably serve all students at one grade level, either grade 6 or grade 8. Eanes would serve all students in the remaining two grade levels.

Students residing in the central portion of this sector would attend Dunbar and Central for grades 6 through 9. Dunbar might house all students in grade 6 and most students in grade 7. Central could then house the remaining students in grade 7, as well as all students in grades 8 and 9.

The northern portion of this sector for grades 6 through 9 will be served by Phillips and the Washington-Fonvielle complex. Phillips might serve all students at one grade level, either 6 or 9, as well as a few students in either grade 7 or 8.

5. Western Sector

Grades 9-12 in the western sector will be served by two high schools, Shaw and Davidson. Facilities should be made available at these two sites to absorb approximately 540 students at Davidson and 305 at Shaw from the Toulminville area.

In this sector, students in grades 6 and 7 will attend Scarborough and Azalea Road. Approximately one half of the students in the Hillsdale

area will attend Scarborough, with the other half attending Azalea Road. All students in grade 8 will attend Hillsdale. Three additional portables will be needed to make this facility adequate. These might be obtained from Emerson Elementary, which is recommended for closing.

6. Southern Sector

The southern sector will be served by Rain Senior High School in grades 9-12 and Rain Junior High School in grades 7-8.

MOBILE METROPOLITAN AREA, SECONDARY SCHOOLS

Name of School	Grades	Capacity		Students			Staff			Estimated Portables
		Perm.	W. Porte	W	N	T	W	N	T	
Senior High School										
Rain	9 - 12	448	812	735	59	794				13
Williamson-Craighead	10 - 12	2062		1008	767	1775				0
Murphy	10 - 12	2900		1440	1360	2800				0
Toulminville	12	638		0	365	365				0
Blount-Vigor	9 - 12	5101		1908	2962	4870				0
Davidson	9 - 12	1943	2146	1738	604	2342				3
Shaw	9 - 12	928		1150	471	1621				0
Junior High School										
Rain	7 - 8	476		415	38	453				0
Eanes-Woodcock	6 - 9	1760		980	764	1744				0
Dunbar-Central	6 - 9	2630		1044	1562	2606				0
Washington - Fonville-Phillips	6 - 9	2975		1040	1562	2602				0

TABLE 5-2

COMPOSITE BUILDING INFORMATION FORM

MOBILE METROPOLITAN AREA, SECONDARY SCHOOLS

Name of School	Grades	Capacity		Students			Staff			Estimated Portables
		Perm.	W. Ports	W	N	T	W	N	T	
Clark	8	1392	1512	531	948	1479				4
Trinity Gardens	6 - 7	868	1078	380	690	1070				7
Prichard	6 - 7	616	646	240	410	650				1
Mobile County Training School	6 - 7	1260	1290	432	859	1291				1
Azalea Road	6 - 7	1015		857	133	990				0
Hillsdale	8	844		858	131	989				7
Scarborough	6 - 7	984		855	133	988				0
Eight Mile	7 - 8	252	312	270	42	312				2
TOTAL		29,090	30,109	15,878	13,595	29,473				38

TABLE 3-2a

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. School Desegregation Plans for the Metropolitan Elementary Schools

In developing the proposed desegregation plans for the elementary schools of the metropolitan area, a variety of approaches have been utilized to move toward the elimination of a dual school structure. No single approach has been utilized throughout the area. Each school and school community was examined from various perspectives before an approach was established.

Because of the nature of housing patterns, particularly in the eastern sector of the metropolitan area, total elimination of all Negro school structures would not seem feasible at this time. However, the local school officials should strive to eliminate the remaining all-Negro schools by additional construction, as discussed at the end of this chapter.

The following descriptions apply to the schools in a clockwise direction, beginning with Chickasaw in the northeast corner of the metropolitan area. It should be noted that several schools have been closed and others utilized at other than elementary grade levels. Schools recommended for closing are: Howard, Caldwell, Emerson and Toulminville. Schools recommending for housing non-elementary grades are: Bienville, Fonseville, Woodcock and Hilledale.

All schools at the elementary level are projected as 1-5 centers with the exception of Williams, South Brookley, Indian Springs, and Eight Mile, which will continue to serve as 1-6 elementary centers.

There is an error factor of less than 1 percent in transposing figures from pupil locator maps to actual student attendance figures.

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Chickasaw (1-5): The Chickasaw attendance area, as indicated on the accompanying maps, has a student population of approximately 473 white students and 100 Negro students in grades 1 through 5.

Whitley (1-5): The zone indicated on the accompanying map for the Whitley school has a student population for grades 1 through 5 of 481 Negro stu and 216 white students.

Glendale-Palmer (1-5): One attendance area will be established for both th Glendale and Palmer facilities. This area has a total of 1-5 student population of 434 whites and 931 Negroes. Glendale should probably hou grades 1 through 3, and Palmer grades 4 and 5. It may be necessary to several sections of grade 3 at Palmer.

Grant (1-5): The attendance area for Grant School is composed of 1,285 Negr students and 15 white students in grades 1 through 5.

Robbins-Hamilton (1-5): A single attendance area will contain both Robbins Hamilton Schools. Approximately 638 white students and 855 Negro stude in grades 1 through 5 live in this area. Robbins should probably serv grades 1, 2 and 3, and Hamilton grades 4 and 5, although several sectio of grade 3 will be necessary at Hamilton.

Gorgas (1-5): In the Gorgas attendance area there are 963 Negro students an 7 white students.

Owens (1-5): In the Owens attendance area there are approximately 1,414 Negro students and 2 white students.

Leinkauf (1-5): There are approximately 273 white students and 165 Negro students residing in the Leinkauf attendance area.

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lington-Council (1-5): One attendance area will serve Arlington and Council schools. Council should probably house grades 1 through 3, and Arlington grades 4 and 5, with several sections of grade 3. There are approximately 350 white students and 659 Negro students in this attendance area.

ll (1-5): The Hall School will serve the 483 white students and 664 Negro students who reside in this attendance area.

rvale (1-5): The attendance area for the Maryvale School is divided into two non-contiguous areas. This school will serve the 472 white students residing in the immediate school vicinity. It will also serve 145 Negro students residing in the zone designated as M on the accompanying map.

rtz (1-5): The Martz School will serve the 402 white students who live in the immediate vicinity, and the 120 Negro students from zone ME, as shown on the attached map.

stlawn (1-5): The Westlawn School will serve the 495 white students living in the immediate vicinity of the school, and the 75 Negro students living in zone W.

d Shell Road (1-5): There are approximately 232 white students and 295 Negro students who live in this area and who attend the Old Shell Road School.

ichton (1-5): In the Crichton School zone there are approximately 438 white students and 348 Negro students.

HEW Plan of July, 1969

Stanton Road (1-5): Stanton Road School will house the 6 white students and the 900 Negro students who live in this attendance area. This school will temporarily remain predominantly Negro in student population. Every effort should be made to house these students in a school west of the expressway.

Brazier (1-5): In grades 1 through 5, there are approximately 10 white students and 1,022 Negro students in this attendance area. This situation is similar to Stanton Road.

Whistler (1-5): The Whistler attendance zone is made up of two non-contiguous areas. In the area in the immediate proximity of the school, there are approximately 181 white students and 205 Negro students.

Thomas (1-5): The Thomas facility will serve the 180 white students and 95 Negro students who live in the area.

Forest Hill (1-5): The Forest Hill School attendance area will be made up of two non-contiguous areas. As indicated on the map, this school will serve the 586 white students who live in the immediate area and the 355 Negro students who live in zone F. In order to house this number of students, 12 portables will be necessary, all of which are available in the district.

Present location of available portables: Emerson (1); Stanton Road (3); Howard (3); Gorgas (4); and Brazier (1).

Austin (1-5): Austin will serve the 331 white students and 19 Negro students living in the school vicinity and 65 Negro students who live in zone A.

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nda (1-5): Fonde will house the 603 white students and 11 Negro students who live in the school vicinity, and 236 Negro students from zone F.

pard (1-5): Shepard will serve the 383 white students and 36 Negro students who live in the area, and 124 Negro students who live in zone S.

ingside (1-5): Morningside will serve the 636 white students who live in the school vicinity, and the 120 Negro students who live in zone MO.

ge (1-5): Dodge will house the 565 white students and 45 Negro students who live in the vicinity of the school.

kson (1-5): Dickson will house the 680 white students and 125 Negro students who live in this attendance area.

ll (1-5): The 678 white students and 155 Negro students who live in this attendance area will attend the Will school, in addition to the 240 Negro students living in zone WH shown on the map. In order to house these students, portables will be necessary.

hard (1-5): The 739 white students and 117 Negro students who live in this attendance area will be housed at Orchard. For this, two portables will be necessary. These two portables may be obtained from Arlington.

th Brookley (1-6): South Brookley will continue to serve as a 1 through 6 school for the student population of 514 white and 72 Negro.

lliams (1-6): Williams will serve as a 1 through 6 school with 571 white and 43 Negro students.

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Indian Springs (1-6): Indian Springs will serve as a 1 through 6 center for the 535 white and 11 Negro students in its attendance area.

Eight Mile (1-6): Eight Mile will serve as a 1 through 6 school for the 78 white students and 66 Negro students in its attendance area.

Where two or more schools serve a single attendance area, the school officials should determine the exact composition of each school, keeping in mind that all students, white and Negro, should progress through each of the schools as they complete the various grade levels. Suggestions are made in the presentation of such attendance areas to help guide school officials toward meaningful school desegregation.

Our recommendations undoubtedly raise the question whether, under the circumstances here, assignments legally are required to be in the desegregation plan if they require substantial additional transportation. This, we believe is a legal question which we can only leave to the parties and to the court.

An alternative in lieu of transportation would result in additional majority Negro schools. The alternative would involve pairing Leinkauf, Caldwell, and Emerson; and the rezoning of Chrichton, Old Shell Road, and Foneville into majority Negro schools.

COMPOSITE BUILDING INFORMATION FORM

MOBILE METROPOLITAN AREA ELEMENTARY SCHOOLS

Name of School	Grades	Capacity Perm.	W. Ports.	Students W	N	T	Staff W	N	T	Estimated Portables
South Brookley	1-6	592		514	72	586				5
Morningside	1-5	578	758	636	120	756				6
Williams	1-6	408	618	571	43	614				7
Woodcock		CHANGED FROM ELEMENTARY TO JUNIOR HIGH COMPLEX								
Maryvale	1-5	612	672	472	145	617				2
Mertz	1-5	510		402	120	522				0
Westlawn	1-5	510	590	495	75	570				3
Hall	1-5	1224		483	664	1147				0
Arlington-Council	1-5	1054	1110	350	659	1009				2
Emerson				CLOSED						
Leinkauf	1-5	442		273	165	438				0
Sub Total this page		5930	6516	4196	2063	6259				25

TABLE 5-3

COMPOSITE BUILDING INFORMATION FORM

MOBILE METROPOLITAN AREA ELEMENTARY SCHOOLS

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Estimated Portables
Sub Total Brought Forward		5930	6516	4196	2063	6259				25
Owens	1-5	1496		2	1414	1416				0
Caldwell				CLOSED						
Howard				CLOSED						
Old Shell Road	1-5	476	536	232	295	527				2
Crichton	1-5	782	820	438	348	786				1
Stanton Road	1-5	1020	1050	6	900	906				1
Fonvielle		CHANGED FROM ELEMENTARY TO JUNIOR HIGH COMPLEX								
Gorgas	1-5	884	1034	7	963	970				5
Palmer-Glendale	1-5	1258	1406	434	931	1365				4
Whitley	1-5	612	702	216	481	697				3
Brazier	1-5	1156	1186	10	1022	1032				1
Sub Total This Page		7684	6232	1345	6354	7699				17
Sub Total		13,614	14,848	5,541	8,417	13,958				42

TABLE 5-3a

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COMPOSITE BUILDING INFORMATION FORM

MOBILE METROPOLITAN AREA ELEMENTARY SCHOOLS

COMPOSITE BUILDING INFORMATION FORM

MOBILE METROPOLITAN AREA ELEMENTARY SCHOOLS

Name of School	Grades	Capacity		Students			Staff			Estimated Portables
		Perm.	W. Forte	W	N	T	W	N	T	
Sub Total Brought Forward		13,614	14,848	5,541	8,417	13,958				42
Grant	1 - 5	1,292	1,382	15	1,285	1,300				3
Robbins-Hamilton	1 - 5	1,496		638	855	1,493				0
Chickasaw	1 - 5	612		473	100	573				0
Shepard	1 - 5	544		383	160	543				0
Dodge	1 - 5	816		565	45	610				0
Fonde	1 - 5	850		605	236	841				0
Austin	1 - 5	408		331	84	415				0
Dickson	1 - 5	816		680	125	805				0
Orchard	1 - 5	816	876	759	117	876				2
Will	1 - 5	816	1,086	678	395	1,073				9
Forest Hill	1 - 5	578	938	586	355	941				12
Hillsdale		CHANGED TO JUNIOR HIGH COMPLEX								
Sub Total This Page		9,044	9,824	5,713	3,757	9,470				26
Sub Total		22,658	24,672	11,254	12,174	23,420				68

TABLE 5-3b

COMPOSITE BUILDING INFORMATION FORM

- MOBILE METROPOLITAN AREA ELEMENTARY SCHOOLS

Name of School	Grades	Capacity		Students			Staff			Estimated Portables
		Perm.	W. Ports.	W	N	T	W	N	T	
Sub Total Brought Forward		22,658	24,672	11,254	12,174	23,428				68
Whistler	1 - 5	680		181	205	386				0
Thomas	1 - 5	272		180	95	275				0
Indian Springs	1 - 6	408	538	535	11	546				4
Eight Mile	1 - 6	340		280	66	346				0
Bienville		CHANGED TO JUNIOR HIGH COMPLEX								
Sub Total This Page		1,700	1,830	1,176	377	1,553				4
Total		24,358	26,502	12,430	12,551	24,981				72

TABLE 5-3c

Construction

The exact locations for new construction have not been made at this time. ral construction recommendations are as follows:

Rural Area:

1. Close Calcedeaver, Mt. Vernon, and Belsaw and build a new elementary school to house these students in an expanded attendance area.

2. Build replacement schools in the following zones:
   a. Satsuma High area
   b. Baker High area
   c. Meadowlake area
   d. Alba area

Metropolitan Area:

It is recommended that no additional building take place east of I-65 Expressway and Mobile River. Additional construction should be located in the Davidson-Shaw area and near I-10 and I-65 north and south of the city limits. This would allow the movement of students away from the all-Negro areas of the core city.

Time Table for Plan Implementation

1969-70 - The entire rural plan can be implemented for 1969-70.

The closing of Toulminville, except for 11th and 12th grade, and

implementation of the high school, junior high, and elementary parts of the metropolitan plan west of I-65 can be accomplished for 1969-70.

1970-71 - The entire metropolitan plan can be implemented.

F. Desegregation of Faculty and Other Staff

The Mobile County School Board shall announce and implement the following policies:

1. The principals, teachers, teacher-aides, and other staff who work directly with children at a school shall be so assigned for the school year 1969-70 and subsequent years that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school and the ratio of other staff in each school are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

   The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

2. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed and otherwise treated without regard to race, color, or national origin, except to the extent necessary to correct discrimination.

If there is to be a reduction in the number of principals, teachers, teacher-aides or other professional staff employed by the school district, which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition, if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the school board will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee.

"Demotion" as used above includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or

grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

G. Transportation

The transportation system shall be completely re-examined regularly by the superintendent, his staff, and the school board. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

H. School Construction and Site Selection

The size and location of new school buildings and additions to existing buildings can significantly affect desegregation now and in the future. All school construction, school consolidation, and site selection (including the location of any temporary classrooms) shall be done in a manner which will prevent the recurrence of the dual school structure once this desegregation plan is implemented.

I. Majority to Minority Transfer Policy

Whenever there shall exist schools containing a majority of Negro students, this school district shall permit a student (Negro or white) attending a school in which his race is in the majority to choose to attend another school where space is available and where his race is in a minority.

CHAPTER VI

SUGGESTIONS FOR PLAN IMPLEMENTATION

Successful implementation of desegregation plans largely depends upon local leadership and good faith in complying with mandates of the Courts and the laws upon which the Courts act. The following suggestions are offered to assist local officials in planning for implementation of desegregation orders.

A. Community

1. The Superintendent and Board of Education should frankly and fully inform all citizens of the community about the legal requirements for school desegregation and their plans for complying with these legal requirements.

2. The Board of Education should issue a public statement clearly setting forth its intention to abide by the law and comply with orders of the Court in an effective and educationally responsible manner.

3. School officials should seek and encourage support and understanding of the press and community organizations representing both races.

4. The Board of Education or some other appropriate government unit should establish a biracial advisory committee

to advise the Board of Education and its staff throughout the implementation of the desegregation plan. Such committee should seek to open up community understanding and communication, and assist the Board in interpreting legal and educational requirements to the public.

5. The Superintendent should actively seek greater involvement of parents of both races through school meetings, newsletters, an active and biracial P.T.A., class meetings, parent conferences, and through home visits by school personnel.

6. The Superintendent and Board of Education should regularly report to the community on progress in implementing the desegregation plan.

HEW Plan of July, 1969

School Personnel

1. The Superintendent should provide all personnal copies of the desegregation plan and arrange for meetings where the personnal will have an opporunity to hear it explained.

2. The Board of Education should issue a policy statement setting forth in clear terms the procedures it will follow in reassignment of personnal (see section on Desegregation of Staff).

3. Assignments of staff for the school year should be made as quickly as possible with appropriate followings by school principals to assure both welcome and support for personnal new to each school. Invitations to visit school before the new school year begins should be offered.

4. The Superintendent should see that a special orientation program is planned and carried out for both the professional and non-professional staffs (including bus drivers, cafeteria workers, secretaries and custodians) preparatory to the new school year. He should make every effort to familiarize new and reassigned staff with facilities, services and building policies and prepare them to carry out their important role in a constructive manner. The Superintendent should direct each principal to see that each teacher new to a school is assigned for help and guidance to a teacher previously assigned to that school. Each such pair of teachers should have an opportunity to meet before the school year actually begins.

5. The Superintendent should arrange an in-service training program during the school year to assist personnal in resolving difficulties and improving instruction throughout the implementation period.

Help in doing this is available from the Center for Intercultural Education at the University of South Alabama.

6. It is important that, through personal observations, students see that nonprofessional service positions in their schools are not for members of one race and that harmonious working relationships can exist between members of both races. The Superintendent and Board of Education should therefore take all necessary steps to assure that all staffs are bi-racial.

HEW Plan of July, 1969

Instructional Program

1. Each principal should be required to appoint bi-racial faculty committees to study and, as necessary, revise each area of the curriculum to assure better learning opportunities for all students. This should become a continuous activity in each school and throughout the district.

2. Student evaluation policies and procedures should be reviewed continuously for areas in need of improvement and adjustment to encourage the educational growth and motivation of students.

3. Remedial programs in reading and mathematics skills, as appropriate, should be introduced and/or expanded for all students in need of special help. Such program should supplement regular course offerings and assignments of students.

4. Grouping procedures should be reviewed and revised as necessary to assure they support the spirit as well as letter of desegregation plan the district has accepted responsibility for implementing in good faith.

5. Participation in extracurricular activities by students of both races should be actively encouraged by administrators and teachers as a means for developing school spirit and a feeling of belonging.

6. School organizations - student government, cheerleaders, musical organizations, athletic teams must be operated on a nondiscriminatory basis and should include students of both races.

7. Guidance counselors should be oriented and urged to play a leading role in successful implementation of the desegregation plan.

8. The curriculum should be reviewed and, as necessary, revised to provide recognition of Negro history, culture and contributions to our society. Library books which deal with sucj subjects should be added to school book collections.

9. Vocational education offerings should be reviewed and improved as a means of providing students of both races with education relevant to vocational interests and as a means of reducing dropouts.

10. Headstart or similar preschool programs for children of both races should be implemented.

11. Use of Federal and Station education funds should be planned comprehensively for maximum educational benefit to all egible children.

D. Students

1. The Superintendent should direct each principal to hold special orientation programs welcoming students who will be new to a school, before the regular school year begins.

2. The Superintendent should require each principal to see that students are frankly and fully informed about the desegregation plan and their responsibilities to help carry it out. Each principal should seek to establish rapport and communication links with new students to encourage mutual understanding and confidence.

3. The Superintendent should direct each principal to establish a student-faculty human relations committee representing both races to aid in the successful implementation of desegregation.

HEW Plan of July, 1969

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All school staff and members of the student body should exert extra effort to assure the full participation of all students of both races in extracurricular programs, including when appropriate the provision of a "late bus" for those staying after school to participate in such programs.

Each principal should request teachers to make themselves available to students outside of regular class for counseling and extra instructional help.

HEW Plan of July, 1969

RESOURCES FOR ASSISTANCE

In addition to the regular resources for assistance available to school officials, districts developing or carrying out plans of desegregation in Alabama may call upon the following agencies for help:

Name: Center for Intercultural Education
Title IV Center
College of Education
University of South Alabama
Address: 307 Gaillard Drive
Mobile, Alabama 36608
Telephone: (205) 344-3400 Ext. 286

U. S. Office of Education
Division of Equal Educational Opportunities
50 Seventh Street, N. W.
Mail Room 404
Atlanta, Georgia 30323

Phone: (404) 526-3076

[Maps omitted—see original record]

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Deposition of Dr. Joe Hall on July 15, 1969

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No. 3003-63

BIRDIE MAE DAVIS, *et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA, by Ramsey Clark, Attorney General, etc.,

Plaintiff-Intervenor,

—v.—

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al.*,

Defendants,

and

J. TWILA FRAZIER, *et al.*,

Defendants-Intervenors.

APPEARANCES:

For Plaintiffs—

CRAWFORD & FIELDS

By: Vernon Z. Crawford, Esq.
William Robinson, Esq.

Deposition of Dr. Joe Hall on July 15, 1969

For Plaintiff-Intervenor—

WALTER GORMAN, Esq.

For Defendants—

PILLANS, REAMS, TAPPAN, WOOD & ROBERTS
By: Abram L. Philips, Jr., Esq.

ALSO PRESENT:

JAMES A. MCPHERSON, *Associate Superintendent,* Mobile County Public School System

BOBBY R. CLARDY, Board of School Commissioners of Mobile County

[4] Mr. Gorman: Before we start, I object to having non-parties and non-counsel for the parties present and I would ask that the deposition not continue until this matter has been ruled on.

Mr. Philips: Okay. Mr. McPherson is a party and so is Mr. Clardy, party defendants to the litigation, and I think their presence is entirely proper, either in their individual capacity as parties or in their representative capacity as representatives of the School Board.

Mr. Gorman: Well, I disagree. I think that the privilege to attend depositions applies really to named parties and not to all the agents of the parties.

Mr. Philips: Okay. Do you have any further objections you want to make?

Mr. Gorman: I have no further objections but I will ask that a ruling be obtained on this before we continue it, a ruling from the Court.

Mr. Philips: Well, I am going to continue with the depositions unless the witness, unless you wish to instruct the witness not to answer.

Mr. Gorman: Well, I do not represent this witness as such, and I think it would be inappropriate for me to instruct him not to answer, but I would ask that this matter be presented to the Court for a ruling if you feel it is proper for Mr. Clardy [5] and Mr. McPherson to be here.

Mr. Philips: I think it is entirely proper for them to be here and I intend to go ahead with the depositions. If you want to present it to the Court, I think it would perhaps be best that you contact the Court.

Mr. Gorman: Well, could we take a brief adjournment?

Mr. Philips: No, we are going to continue.

Mr. Gorman: So what you are saying is that you are making it impossible for me to present it to the Court without excusing myself from my attendance here.

Mr. Philips: Well, you can have Mr. Crawford go if you would like.

Mr. Gorman: Well, Mr. Crawford has the responsibility to be here as I do as representing one of the parties. I would like to take a brief break and contact the Court and see if we can obtain a ruling.

Mr. Philips: Well, I am going to continue with the deposition. If you want to go to the Court, that's all right with me.

Deposition of Dr. Joe Hall on July 15, 1969

Mr. Gorman: Okay.

Mr. Crawford: Before you begin, when you two finish—

Mr. Philips: We seem to be finished temporarily.

Mr. Crawford: I would like to object to it on the grounds that on July 3rd when there was a meeting, supposedly conference, between Mr. Hall and other representatives of H.E.W. and the [6] School Board, that counsel for the plaintiff was not even notified of this conference; that—

Mr. Philips: Vernon, this doesn't have a thing to do with the depositions. If you want to make such an objection as that, you might ought to take that to Judge Thomas. He called the conference and invited the people that he wanted to—

Mr. Crawford: And I would like to state for the record that counsel for the plaintiff has been attempting to reach Doctor Hall ever since he learned that he was in town, that he has called repeatedly and left messages asking him to call which on only one occasion was returned. I understand that there have been several conferences between Dr. Hall and the School Board, of course, without plaintiff's counsel being present.

Mr. Philips: That, of course, is between you and Dr. Hall, and if you wish to inquire into that in the course of the deposition, I am sure you will feel free to do so.

We are ready, Mrs. Leamy.

Deposition of Dr. Joe Hall on July 15, 1969

DR. JOE HALL, having been first duly and legally sworn, testified on his oath as follows:

On Direct Examination by Mr. Philips:

Q. State your full name, if you will, please, Dr. Hall? A. The name I go by is Joe, JOE, Hall. I was born Josiah, [7] JOSIAH, Calvin Hall, Jr., and you can see why I go by Joe.

Q. And your address? A. My address is 7830 Southwest 57th Court, that's 57 Court, South Miami, Florida.

Q. Is that a permanent address? A. Yes.

Q. How long have you lived there? A. Oh, since January. Prior to that I lived at 500 Hardy Road, Coral Gables, for the preceding—well, since '52 I guess it was I moved there.

Q. Are you married? A. Yes.

Q. Do you have children? A. Five.

Q. What ages? A. I have twin boys who are twenty-four or twenty-five. That won't make any difference, will it? I can figure it out if it does.

Q. No. A. And twin girls who are twenty-one and one girl who is fifteen.

Q. If you will, Dr. Hall, give us your professional background, not your educational experience. I don't think we need to [8] go that far back, but your professional background. A. That is, where I have worked?

Q. Where you have worked and so forth. A. Clear on back?

Q. Well, insofar as it deals with schools and— A. Well, I taught school and served as principal in Leon County in

Florida. From that—that was back in 1932 to '35, and I was principal at a school at a place called Carrabelle, Florida. Then I worked in the State Department of Education in various capacities, the last one being the Director of the Division of Instruction, until 1948. In 1948 I went to Dade County as the Director of Instruction and held successive positions as Assistant Superintendent for Instruction, Associate Superintendent for Instruction, and then became Superintendent in January of 1957. I served in that capacity until January 16th, 1968, at which time I retired. Then I subsequently took the position in June, June the 4th, 1968, with the University of Miami with the title of Visiting Professor of Education, and three-fourths of my time was supposed to be spent in teaching and various kinds of work at the college and one-fourth in part of the college known as the Florida School Desegregation Consulting Center which is a Title IV project.

[9] Q. In your superintendency you said Dade County, Florida. Is that the Miami, Florida— A. Yes, that is—

Q. All of Dade County is Miami? A. All of Dade County, which includes all the incorporated as well as the unincorporated parts of the County.

Q. It's a consolidated City-County system? A. Well, it's a County system, yes.

Q. Now, you are currently engaged then at the University of Miami you said in the combination teaching-consulting capacity? A. Yes.

Q. Now, Dr. Hall, have you had occasion in any of your capacities to work for or with the Department of Health, Education and Welfare, the Office of Education of the Department of Health, Education and Welfare? A. Yes.

Deposition of Dr. Joe Hall on July 15, 1969

Q. When did your work in this regard first begin? A. Well, the Florida School Desegregation Consulting Center is a Title IV project of the University of Miami, and I became officially connected with that on June the 4th, 1968.

Q. All right. In that capacity— A. But it's not a direct, you wouldn't call it a direct relationship with H.E.W. I guess it really works under the Office [10] of Education which is, of course, under H.E.W.

Q. A department of it? A. Yes.

Q. Okay. In your work in that regard, what capacity do you work in? What do you consider yourself or what do they consider you? A. Well, my title is Assistant Director of the Florida School Desegregation Consulting Center.

Q. And what actual work do you do? A. Well, in varying capacities, among them to go out and help Counties in Florida develop plans for the desegregation of their schools.

Q. And what Counties in Florida have you worked with in this regard? A. I don't know that I can name all of them. I can name several of them. Columbia—

Q. Now, these are Counties you are naming? A. Yes. Florida is all a County unit system. Columbia County, Nassau County, Alachua County—

Q. How do you spell that? A. ALACHUA, Dixie County, Levy County, Sumter County. In that particular capacity there are some more. I think I have copies of all this. (Pause) Palm Beach County. Now, those [11] I have worked with to the extent of helping develop complete

plans. Other Counties I have worked with just briefly, go in and talk with them about their program. Also I have helped in workshops for the personnel in the school system that is moving into a desegregation plan, supposedly helping them to adjust to the new situations in which they will be working.

Q. In these others that you have talked with about their programs, can you give us those? A. The names of them?

Q. Yes. A. Oh, great goodness, I guess I have met with all the superintendents. I have had conferences with them, so I will just say to varying degrees probably every County in Florida, from a brief conference say with the superintendent or to an overall work conference to, oh, a day or a day and a half. Now, do you want those that I have spent time in the County itself, is that what you are asking?

Q. Well, I guess that is not necessary, Dr. Hall, unless you feel that you can recall those where you have actually gone in. A. Well, I can name off a bunch of them. I don't know if I can name all of them.

Q. All right. Name as many as you can. A. Manatee County, Duval County, Escambia County, Orange, Pinellas, [12] Hillsborough. I just hit Glades coming up here. Those are all I can think of right off. There may be others that I have actually been in the County.

Q. Now, in connection with your working with these various systems, how were you brought into it? A. I was invited by the school system.

Q. By the school system? A. Either the superintendent or the board or generally both. I take it back. Duval

—well, I was there at one time just as I described it, but Duval had a court order in which the Florida School Desegregation Consulting Center was ordered by the court to develop a plan, and that order came before I joined the Center so the work had not been completed until after I joined the Center and that one they were not in there at the request of the local school officials. They were in there by the order of the court.

Q. Okay. Are there any others where they were in there by the order of the court other than Duval? A. No, I believe not. I believe that is the only one. There were some others that were under court order but not order asking the Center in.

Q. Okay. Have you had occasion to perform similar functions for any school systems outside of Florida? [13] A. I did some work with—what is it?—Rockingham. I just spent one day working with some people there. It was more the school principals than the County office. Rockingham, North Carolina. I spent about three days last summer in West Virginia at, I believe the name of the school is West Virginia Wesleyan where they were having a desegregation conference and I was there as a consultant.

Q. That is a university or a college? A. Yes. It's a State—well, no, it's a Methodist school, I believe, although I am not sure about their work.

Q. Okay. Now, I believe all these you have described so far are where you have been there in your capacity as a consultant or in connection with your work with the Florida Desegregation Center. Have you had occasion to

consult with school officials or work with school systems in this regard in any other capacity, as a consultant to any other group? A. Are you talking about desegregation or about anything else?

Q. About desegregation. For example, the Department of Justice or the NAACP or anything like that. A. No, sir. I was a witness in a case in Orlando but I was called by the School Board attorneys, I guess, as a witness. I was supposed to be an expert witness or something.

Q. Is this the only occasion where you have had occasion to testify [14] in court as a witness, either in court or by deposition in a school desegregation case? A. Well, I on my own, I mean—are you talking about since I joined the Center or before?

Q. Well, either way. A. Well, when I was Superintendent of Schools, I spent a lot of time in the courts, yes.

Q. Testifying— A. For the school system.

Q. For the school system? In desegregation litigation involving that school system? A. Yes.

Q. All right. Other than that, is the testimony in the Orlando, Florida—did you say Orlando? A. Yes. That is Orange County.

Q. Orange County. A. No, I haven't.

Q. No other occasion to testify? A. Not that I recall.

Q. And no occasion to work with—have you ever had occasion to work with the United States Department of Justice as a consultant? A. No, sir.

[15] Q. Or the NAACP or any other group? A. No, sir.

Q. Okay. Now, are you presently involved in working with a school system in the desegregation process as a

result of a court order or for any other reason? A. Say the first part of that again.

Q. Are you presently involved in working with a school system? A. Yes.

Q. What school system? A. Well, here with Mobile is one, but I am working with Orange County and with—well, I don't know what the extent of my work will be yet with Glades County, the one that I stopped by yesterday. I guess I just terminated my work on Palm Beach County so I guess, I don't know whether they will ask me back or not. I doubt it.

Mr. Crawford: Is this West Palm Beach or Palm Beach?

A. Palm Beach is the name of the County. The town is West Palm Beach.

Q. And your assignment now involves Glades County and Orange County in addition to whatever work you may now be doing with the Mobile system? You will have to answer verbally. She can't see you. A. Oh, yes, I see.

[16] Q. Sometimes she will pick up the nod of your head but normally you will have to answer. A. Yes. Well, I am not sure to what extent that Glades County thing will run, as I say. We have one unfinished project with Pinellas County. That is St. Petersburg. They have asked us to quit. They invited us. We were invited by the superintendent and they asked us to hold it in abeyance for the time being so, as you say, that is an unfinished item.

Q. Excuse me just a moment. (Pause) Dr. Hall, I would like to get your opinion on several matters. I would like

to get your opinion on the proposition of bussing students or transporting students by bus in the school system for the purpose of achieving a racial balance in the schools. What is your opinion on that? A. You are talking about my personal opinion?

Q. Yes.

Mr. Crawford: I am going to object to that. I think this question and answer as to his personal opinion has nothing to do with this matter in terms of his professional opinion. His personal life has nothing, does not enter into play in this. His personal experiences as it relates to the witness, Joe Hall, has nothing to do with his ability to devise a place, and I object to his personal opinion on it.

[17] A. Maybe you meant professional.

Mr. Philips: Well, I assume in his personal opinion he would have to take into account everything that affects him as a professional man.

Your personal professional opinion then.

A. Well—

Mr. Crawford: You see, his personal character or integrity is not in question here, I hope.

Mr. Philips: I am not questioning his integrity. I am asking for his opinion.

Mr. Crawford: I think the question should be limited and his answer should be limited to his

expertise in terms of the job that he was hired or sent here to do.

Mr. Philips: I am asking for his personal professional opinion as a professional educator.

A. Can I go on now?

Q. Sure. A. Well, generally speaking I have always felt that the less bussing you could have, the better you were, but I have also always recognized that you had to have bussing in order to operate schools to get the groups of people together for educational purposes, so I think bussing is essential for the operation of schools.

[18] Q. In a rural system. Now, the question I asked—

Mr. Crawford: Now, we are going to object to the leading question—

Q. The question I asked was bussing students to achieve a racial balance. A. Well, to achieve a racial balance. I don't know that I would have a particular opinion on the balance. I have felt that some bussing would probably be necessary for the desegregation of schools and in some school systems in which I have worked I concurred with the superintendent who felt that he did want a racial balance and he was going to try to use bussing to attain that particular balance. In his situation I thought it was a good idea.

Q. You said in order to achieve desegregation. I asked your opinion as to the advisability of your personal feeling, your personal professional feeling with reference to bussing strictly to achieve racial balance.

Mr. Gorman: I am going to object. The witness has already given his personal professional opinion concerning bussing with respect to desegregation and bussing in general. Now, the term "racial balance" isn't sufficiently descriptive, I think, to show the area that the question is directed to.

Q. All right. Dr. Hall, you have said, as I understood your [19] testimony, you have sometimes found that it was necessary in order to achieve desegregation. Do you think it is desirable? A. In some individual situations, yes, I I think it would be desirable.

Q. It is desirable from the standpoint of what, the school system, the children? A. Yes, all, the community, the school system, and the children, but I wouldn't want to make that an universal application. I would just say that in some situations I would think that would be good. I am thinking of Alachua County where we worked through the whole thing and thought it would be best for everybody involved to try for some balancing.

Q. Do you think it is undesirable in some situations to bus students in a school system to achieve a racial balance?

Mr. Gorman: I object again. I think your use of the term "racial balance" isn't sufficiently descriptive.

Mr. Philips: If the witness has an opinion on it, I assume that it is.

Mr. Crawford: That results in the question whether the witness knows what racial balance is,

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the definition of it. We have had so many definitions of racial balance.

Mr. Gorman: It's a term that has a legal definition as well as a—

[20] Mr. Philips: Well, let's let the witness then give us his opinion based on what he understands it to mean.

A. Well, let's say, if I can illustrate, suppose you have an eighty-twenty white-black ratio in a school system, but say one school, when you set everything up, winds up to be about eighty-twenty black versus white. I think that there would be advantages to the school system and to all concerned to do some bussing to achieve a racial balance in a situation of that kind.

Q. Can you tell us if you have an opinion as to whether there are undesirable effects of bussing to achieve a racial balance? A. If there are undesirable effects?

Q. You say that you feel it is desirable in some situations and undesirable in others. Why is it undesirable? A. I am trying to comprehend fully your question. Just give me a chance to— I gave you an illustration of where I thought it would be desirable. I wouldn't think if you had, say your overall ratio was eighty-twenty again and you had one school with five percent and another school with fifteen percent say of one race, I would see no point or any desirability or anything to be gained by bussing to get them all say ten percent or twenty percent, to get them all the same percentage or the same ratio.

[21] Q. You are basing everything then on strictly percentages as they exist in a certain situation and you don't

attach any significance beyond that from the standpoint of the desirability or non-desirability of the general concept of bussing to achieve a racial balance?

> Mr. Gorman: Well, once again I object. I think that the witness has already explained what his opinions were concerning bussing to achieve desegregation within the context of what he believes racial balance to mean, and he has already answered that.
>
> Mr. Philips: Will you read the question back to him, please, Mrs. Leamy?
>
> Reporter: You are basing everything then on strictly percentages as they exist in a certain situation and you don't attach any significance beyond that from the standpoint of the desirability or non-desirability of the general concept of bussing to achieve a racial balance?

A. Well, let's get into the educational thing of it. I think that in our society today it is good both for whites and blacks to have associational experiences in a school situation with each other. I don't know whether that—

Q. All right. Relate that to the question that I asked about the bussing to achieve racial balance. [22] A. If it takes some bussing to achieve that, I would say it would be to the advantage of all the children concerned, yes.

Q. You agree with that as your personal professional opinion? A. Now, I have tried to say that I didn't want to speak in terms of generalizations, that I would rather speak in terms of specifics, and I think you are saying more than

I said when you stated what I said. I said I thought it was desirable for our white people and our black people to have associational experiences in a school system. It would depend on the individual situation involved as to whether I would think that would warrant bussing. As a general principle, as I have also stated, that the less bussing you have, I think the better off you are.

Q. Okay. We are dealing with a concept, of course, and you and I probably because of our backgrounds, you being an educator and me a lawyer, perhaps we can't communicate fully on it, but I was just trying to explore as fully as possible your professional opinion as an educator on this point. A. Well, what you run into, of course, is a weighing of values and you have to, you can't put any of your values in ultimates and establish a general principle. You have to weigh values along the line.

Q. All right. Now, can we move along and get your opinion in [23] the same manner, your personal professional opinion on the concept of free choice of schools as a method of student assignment in the school system? A. Well, my opinion on that has undergone some change over a period of time, I guess as everybody who has worked with a particular problem of desegregation. At one time I felt that free choice was desirable, that a person, that in operating a school that he ought to have the same freedom of going to school that a housewife would have in going to a grocery store, just go wherever she pleased. However, you can't operate a school system on that basis, at least not entirely. You have to have some kind of restrictions about who can attend certain schools, else you will have some schools

vacant and some schools very overloaded, so as you have moved into the desegregation area, I have come to the conclusion that free choice is not a satisfactory way to operate schools. It puts a burden, it has put a burden upon the negro students that shouldn't be placed on them and it also places a burden sometimes upon white people that shouldn't be placed on them.

Q. Your change in evaluation then, as I understand it from your response, is that the only thing you find wrong with the freedom of choice concept is that it fails to achieve desegregation, is that correct?

[24] Mr. Gorman: No, the witness didn't testify to that.

A. I didn't say that.

Mr. Gorman: I object to the form of that question.
Mr. Philips: All right. Let him explain then.

A. It does fail to achieve desegregation but it also places a burden upon a person making a choice that shouldn't be placed on him.

Q. Well, what burden is this? A. Well, let's illustrate. Suppose you lived in an area where there was an all-black school and you wanted to go to that school and you would be the only white person in that school. The pressures from your friends and your society would make it such or might make it such that you just, that you would not choose to go to that particular school.

Q. And so you feel that it, taking your example— A. That it places a burden upon the individual that I think should be assumed by the officials operating the agency.

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Q. You think it's important then to set up a structure to relieve me of having to exercise my choice? A. Well, I think it's important not to place an excessive—

Mr. Gorman: I am going to object again to the question. The witness didn't testify as you have phrased the question.

Mr. Philips: I am asking him another question, if he feels that [25] it is necessary then to set up a structure to relieve me of the responsibility or the burden of making my own choice.

A. I think it's necessary to relieve you from the social pressures that would come to you from making a choice and the situation would be applicable to black and white.

Excuse me. I have been working with this thing so long, I say black. If you would prefer negro, just put negro in every time I have said it. They have switched over down our way and they use black and white.

Mr. Philips: We have had a problem here with—

Mr. Gorman: Whatever Mr. Crawford would like.

Mr. Crawford: Colored, negro or black, either one it doesn't matter. Call it by any name but most of them prefer black, even as white as I am.

Q. All right. Now, let's move on to another expression of your opinion, Dr. Hall. What is your opinion on an artificial arrangement of student assignment, whether it be bussing students or gerrymandering school districts in an unnatural manner or whatever the arrangement may be,

an artificial arrangement for the sole purpose of increasing the extent of integration?

Mr. Crawford: Now, we are going to object to that question as to form. It is not clear as to what this witness has to answer [26] as to his opinion, and the phrasing of that question, the words used, is suggesting that there has been gerrymandering by the H.E.W.

Mr. Philips: I am not suggesting anything. I am asking his opinion on a certain situation.

Mr. Crawford: Well, the form of the question suggests that.

Mr. Philips: I am not suggesting anything. I am asking what his opinion is on such an arrangement if it should exist.

A. Well, my personal opinion is that everything possible at this particular time in our society should be done to encourage desegregation, and in saying that I am aware that neither blacks nor whites like the idea but I think both of them are going to have to do some giving in order for it to be accomplished.

Q. Well, by that do you—how do you relate that to my question as to your opinion as to whether it is desirable to resort to an artificial arrangement? A. Well, as I understood it, in your question you asked what did I think of gerrymandering boundaries in order to achieve desegregation, and I thought I said that I favored it.

Q. I wasn't sure from your answer. What is your opinion as to the desirability of a transfer policy allowing transfers

of students for good cause without race as a factor? [27] A. In opinion that would be essential to operate a school system. There are, when you deal with thousands of people —well, we have a couple of hundred thousand in our school system in Dade County and you have got seventy-five thousand here, there are always some individuals who without regard to race, and you can't anticipate in advance the reason, so for justifiable cause not based on race then I would think such a policy would be good.

Q. What is your opinion based on your experience as to the desirability of having a small minority of one racial group, regardless of which it is, assigned to a school with a large majority of the other group? A. That is where I would prefer some kind of balance that you were talking about awhile ago. I think it is better to have a considerable number of both races, both black and white races, in a particular school.

Q. Do you think it is undesirable to have a small minority of white students in a school with a great majority of negro students? A. No, no more so than I feel the same way about the blacks.

Q. Well, that is the next question I was going to ask. You think it is undesirable whether the minority is white or black? A. There again you come to certain kinds of values. You asked [28] me if I thought, asked me what I thought, and if I had my preferred situation, I would say have a considerable number of each race in a school.

Q. Well, with relationship then I gather you say that the next preferable thing would be to have the small minority, and then the next preferable would be to not have any of a

minority race? A. Well, I don't know whether I would go that third step but I think you are getting into the operation of a school where you would release certain people because they are a minority and you get into all those problems and I don't think at this time—let's see, I have undergone a change there, too, in my own thinking. I went through it when I was a superintendent. We had what we called a, we had a transfer policy that would allow anybody regardless of race to transfer to any other school where they had room if he would furnish his own transportation. They had gone that far on that freedom of choice, but I came to the conclusion after working with that for a while that that policy had to be discontinued.

Q. Well, this is a little bit different from what I am talking about, the concept of having a small minority of negro students assigned irrevocably to a school or a small minority of white students. Do you think that is desirable or undesirable? [29] A. That is not as desirable as having a larger number.

Q. Well, do you think it is desirable or undesirable?

Mr. Gorman: He has already answered the question.

A. Yeah. Well, I don't have a thought on it. You run into a case like this, you will have a school system that only has one person of a race. For instance, if you were in—what is some country?—Liberia, if you wanted to go to school, you would be the only one of the race.

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Q. I am talking about Mobile, Alabama. A. Well, you didn't say that.

Q. I thought we were dealing at least with the United States. A. Oh, I'm sorry.

Q. I am not trying to be facetious but I thought we were all at least— A. Well, you have got situations of that kind say in Washington, D. C., or places like that. I think they ought to go to a school, if they live in the community, that there would be no necessity for a transfer.

Q. Then you don't see any undesirability of placing a small minority of one race in a school with a large majority of the other race? A. I think I tried to say that just as clearly as I could. I [30] see some undesirable things about it but they are not as undesirable as the recourse would be.

Q. In other words, they are undesirable except for your feeling of the necessity to achieve desegregation? A. I expect that would probably say it, yes.

Q. Okay. What is your professional opinion, Dr. Hall, on the general proposition of taking elementary school students, youngsters, out of their neighborhood to a distant school removed from their neighborhood, as a general proposition? A. As a general proposition I would not think it would be too good. As a specific proposition, though, I would.

Q. As a specific proposition to achieve desegregation you think it would? A. Yes, and to achieve some other things, yes.

Q. What is your professional opinion, Dr. Hall, on the neighborhood school concept generally? A. I think maybe all of us in education have been brought up with the idea that the neighborhood school was a good idea, and that the

community and the school should work together as a total situation, and again I have undergone some change in my thinking because in your metropolitan areas your neighborloods break down and you just don't have the neighborlood any more even though you may have a group of people that live [31] close together.

Q. Okay. What is your professional opinion, Dr. Hall, on the concept—and I am not sure that I have it right, but on the concept of articulation, which I understand to be a concept of students moving in some sort of regular relationship to each other through the school program as well as being broken up about every year or so and separated off into a different direction? A. Well, I think it is a good thing to progress regularly through the school systems, though in our school system and I assume here, most everywhere where you have all these military people in and out, you change your locations all the time.

Q. What I have in mind I think in the concept is where students identify with a school and progress through elementary school and give or six grades rather than being assigned to a different school each year. A. Well, I think that progression, if it follows along together, is good.

Q. Do you have any professional opinion from the standpoint of your experience in the desegregation process as to whether it's desirable or undesirable to have a substantial majority, a substantial minority of white students in a school with a majority of negro students in the particular school? [32] A. No particular opinion.

Q. No particular opinion? In that respect I have in mind by substantial minority say thirty percent, thirty-five per-

cent, forty percent white minority and an otherwise negro majority. You have no opinion on that? A. No particular opinion.

Q. Have you ever had any opinion on that? A. Yes, I suppose so. I guess it has grown a little bit out of my background and environment. I have had an opinion on that. I have sometimes felt that a school, if it went over your fifty percent mark with blacks, would resegregate and the community would then become black just while holding the same boundaries, while holding the same boundaries, and there is some indication that that has occurred. For instance, in Mobile there are schools that were once all white which gradually turned black. Then I have sometimes thought also that the school system had an obligation, whatever its share of the responsibility was, to help to stabilize the community and not to encourage that type of thing where people sell their homes and move and all that sort of business, and if they get back to that very first question when you asked me about balancing, if you could balance all over, then the schools would not be having any effect upon your real estate property [33] or values or anything of that sort. It would help to stabilize the community.

Q. You think then it is desirable to set up this racial balance then to stabilize the community? A. Well, that is one value. I find it hard to answer your question just in terms of one value. You see, you have a whole group of values and you are bringing them out here one at a time, and to isolate one from the other, when you get down to making a final judgment, you have to bring all these values in, but that would achieve one value. That would help in

the stabilizing of your community to whatever extent the schools are responsible for the, what is occurring in the community itself. Now, sometimes that occurs without the schools having anything to do with it.

Q. Then you think it would be desirable to work towards that in the school systems? A. Yes. I think it would have some values, yes.

Q. Can you give us your opinion based on your experience as to the effect on a group of students who are say lower achievers who are assigned into a school with a group who are achievers on a higher level and are placed thus into competition? Have you had any experience with that? A. Oh, yes.

[34] Q. What has been the result? A. Well, you have that in every classroom in every school system in the United States. You have people of varying abilities in the classroom, and the teachers in elementary schools, they work systematically with three or four groups and they alter their groups with respect to the type of subject matter they are handling and all that sort of thing.

Q. Do you find any undesirable effects where a group of lower achievers, where there is a marked difference in the achievers, on the two groups of students? A. Well, not unless they are what you call mentally retarded or unable, or emotionally unstable, so in throwing those two things out, there is no particular problem.

Q. Assume that you had a gap or say two or three years as far as their educational achievement level between one group of students and another that were placed in the same class— A. You have that all the time.

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Q. Do you find that undesirable? A. Well, no.

Q. You don't find anything undesirable about it? A. Well, no. I would have to say, if you want a direct answer, I would have to say no because you couldn't operate a school without—there is no classroom that I know of anywhere that [35] doesn't have that variation in it. They will not have a group that are completely homogeneous, and even there in a group that are completely homogeneous by intelligence, they will have that variation in the various subject areas. In any group of thirty kids you will have a range of at least three years in some different subjects.

Q. Between, say within a group of thirty kids you would have a range— A. Of at least three years, yes.

Q. Now, you mean a range with one student being on the lower end of the scale as compared with the top student, or a group half being on the lower end of the scale and half being on the top end? A. Well, some might be, in one subject area some might be ahead and in another subject area some of them might be.

Q. I am talking now about in elementary school. A. That is what I am talking about. You take the matter of arithmetic and reading, one student might be more advanced than the other in arithmetic and the other might be more advanced in reading or what-have-you.

Q. You don't find then any undesirable effect on either the higher achievement group or the lower achievement group by placing the two groups together in a classroom situation? [36] A. No, sir. As a matter of fact, I happen to be a product myself of a school that had eight grades in one classroom and there were certain advantages of that and certain disadvantages.

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Q. Where did you go to school, please, sir? A. I guess my first year of school was in Valleyhead. I was born in Mintone, Alabama, and then I went to school in northeast Georgia way out in the country about thirty miles north of Athens until I was about twelve years old, and then I went into a graded school after I was in about the sixth grade, I mean where we had a whole grade in one classroom, but my first five years it was all of us in one room.

Q. And you didn't find any drawbacks there, did you? A. No, sir. As I said, there are certain advantages and certain disadvantages.

Q. Was this an integrated school? A. No, sir, not in northeast Georgia when I went to school.

Q. Dr. Hall, I will ask you for another expression of your professional opinion as to the desirability of forcing white students to attend a formerly negro school and vice versa if they do not wish to do so? A. I think I would have to say that I would favor requiring them to attend.

[37] Q. You think you would? A. Because every experience I have had, I mean we have built a new school and everybody wants to stay in the old one, and as soon as they get over there and get settled, why, they get just as happy within a month but they don't like the idea but it works out all right once they get settled.

Q. All right. Now, you have explained that in terms of a new school. Would your opinion be the same with reference to an old established school? A. Yes.

Q. Requiring and forcing negro students to go into an otherwise all-white neighborhood to attend a school when they did not wish to and vice versa? A. Yes.

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Q. You think this is desirable? A. Yes. Most of the objections I have run across from the community has been whites going to all-black schools, which in a way seems to me to negate some of the former arguments that all schools were equal which so many contended for so many years.

Q. And you don't see any undesirability in this? I realize you think it's desirable but— A. I see some, I see a community reluctance, yes, because I have [38] run across that repeatedly but I don't think that the school officials can give way to that reluctance and I don't think there would be anything bad about it once it's accomplished. I think it's sort of the dread of the unknown or something. Once they get in it, then in a short time everything is running all right.

Q. What do you think then accounts for resegregation? A. Most of the resegregation with which I have had experience has been community rather than school. That is, what they call blockbusting and the people would begin to move away, and that's where most of my experience lies.

Q. You haven't found or you haven't had any experience then with resegregation in terms of people moving to avoid one school and attain another? A. Just a little, yes. More in advance of the fact. I mean they move before they have even gotten into the school. There is a feeling that goes around the community. I guess that would come back a little bit too, if the school system were going to be a part say in the stabilizing of the community, it would really be better if you are going in terms of social planning, if you wanted to go so far as that, to just desegregate all the schools and then there wouldn't be any of this fleeing or

moving, but I guess that is one reason somewhere [39] in this report that we were inclined to feel that this was just an opinion and certainly we are not social engineers or anything of that kind, but it would seem to us that unless the Mobile school system and the Mobile planners took some positive steps, that the whole area east of the Expressway was apt to become black and the area west of the Expressway was apt to become white unless somebody went out and really did some work on it because you could kind of see the movement that way.

Q. Now, as I recall, the plan that you submitted involved moving negro students out of the area east of the Expressway? A. Into the area west, and part of that was—

Q. How does this stabilize the community? A. This would have the effect of showing them that it won't do any good to move west of the Expressway because we are still going to be going to school with these black people and there wouldn't be any point in moving. That is purely social and not educational, but also it does deal with the whole planned development of a community and I would—I know I was working in one school system where they were talking about desegregating the school and before they had even begun to do anything, people began to put their houses up for sale and they were going to move over to this other place, and if the word [40] had gotten out that this other place would be desegregated, too, then there wouldn't have been any point in all of this real estate droppage.

Q. Now, do you think that it is essential in the desegregation of a school system to eliminate every all-white school and every all-negro school? A. Let's say that I

would say that that was one of those desirable things but I don't think it's essential to meet the requirements of the law.

Q. As you understand the requirements of the law, you don't think that it is necessary? A. I was told by several people for me not to start interpreting law so I had better not say what my understandings of the law are, but at least I have to operate in the framework of what I understand the law to be and I would think it would be desirable both —I guess I made this statement earlier, that it is desirable for all young people to have the experience of going to school with—and this really needs to be a part of your total educational planning. That is the only thing that I see it really in the long run, unless the people know each other and have experience with them, that in the way, one thing that our schools have done through the years, it has been a great melting pot where people have known each [41] other in addition to teaching reading, writing and arithmetic.

Q. You think it is desirable then to seek to eliminate— A. Both all-white and all-black schools.

Q. Both all-white and all-black schools? A. And to do your very best, yes.

Q. Is this what you sought to do in the plan for Mobile? A. To the extent we could, yes, within reason. I have read the newspaper and I guess they don't even consider that within reason, but within reason, yes.

Q. Okay. Is this what you did in Miami in your own school system? A. Not at the time, no, but as I said, the whole thing has gone through an evolutionary process, the

concepts of desegregation. We went through a process of freedom of choice type of thing that everybody thought would have in it some possibilities. Then we went through the process of asking ourselves if we had never had a dual school system, would we have a school there, and if the answer was no, we closed that school, but the—

Q. Wait a minute. Let me ask you this. I don't mean to cut you off but getting back to a specific question. When did you eliminate in the Miami system the existence of all all-white and all all-black schools? [42] A. They haven't been eliminated. They aren't eliminated in this Mobile plan.

Q. How many are there in the plan you submitted for Mobile? A. I think there are five.

Q. How many are there in Miami, do you know? A. Not right off-hand. There are more than that.

Q. Could you give me some general idea? A. No, I couldn't.

Q. At the time you were superintendent could you give me some general idea? A. Not without looking it up.

Q. Just within, can you give me a ballpark figure as to your recollection? A. I wouldn't want to give an opinion on that. I would rather look it up and I can look it up for you. I always thought of it the other way, of the ones that I was eliminating rather than the ones that I had left.

Q. All right. How many did you eliminate? A. Well, we closed down four former all-black high schools and quite a number moved into desegregated schools.

Q. Well, would you say that seventy-five percent of your schools— A. I think at the present time there is one all-black high school and one nearly all-black.

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[43] Q. What about all-white? A. There is one all-white and two others that are nearly all-white.

Q. And that was for the 1968-69 school year that they existed in Miami? A. That was the last year, yes. One of those had resegregated.

Q. How about the year before that, do you remember? Was it roughly the same? A. I believe we had a couple of all-blacks that we closed down. Now, I am swearing to these things, that I am telling the whole truth, but the timing on these things—what I am saying is true but the time may not be true, the exact time. (Pause) I have eliminated all but one black high school. We had twenty-two schools and I have eliminated all of them but one and then one other, though, became resegregated but I don't think the schools were responsible for that. That is what I was going into because I think it was just a community movement.

Q. All right. Who contacted you with reference to your working in the Mobile school system? A. Mr. Jordan, J. J. Jordan.

Q. J. J. Jordan. When did he contact you? A. On Friday, June the 6th.

[44] Q. And how did he contact you? A. By telephone.

Q. And what did he ask you to do? A. He asked me if I would come out here and direct a survey for the study of the Mobile school system for the Office of Education and I guess he said that it was, that it had to be done in thirty days or something like that.

Mr. Gorman: I will have a running objection to the hearsay.

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Q. All right. Now, when did you come to Mobile? A. On the 10th. Yes, on July the 10th. I'm sorry, June the 10th. I'm sorry, June the 10th.

Q. Yes, June the 10th. All right. Prior to the time you came to Mobile did you discuss this with anyone else that you were coming to Mobile? A. Only with Dr. Stolee.

Q. Dr. Stolee. Identify him fully, if you will. A. He is the Director of the Florida School Desegregation Consulting Center and is my immediate superior. S T O L double E, Dr. Michael Stolee.

Q. Okay. And after you talked with Mr. Jordan on June the 6th, when did you talk with him about this again, do you recall? A. Oh, shortly after I got here. He was in Tampa. His wife was in the hospital and I called him, I don't recall the exact [45] time. He told me that he would come out just as soon as he could to assist and I told him all we were going ahead and doing. He gave us a sort of an outline of the kind of thing that he had wanted done and then we proceeded to work on that basis.

Q. What information were you given prior to coming to Mobile about the Mobile school system? A. Well, just about its size, about how, its approximate size, the approximate number of students, the approximate number of schools, and whether it was a County unit or an individual unit, and whether it was under court order or under H.E.W., and what the, a little bit of the nature of the problem though not all of the nature of the problem.

Q. What was the nature of the problem? A. Well, the nature of the problem was that it was a study that had been ordered by the court.

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Q. Is that all you have reference to when you say the nature of the problem? A. Well, the other part was that, that I didn't know about, was that the school system didn't want us. At least I gathered that after I got here from some of the comments that I heard in the paper and from some of the School Board members, because I had always been in the proposition where I had always [46] been asked in by the school system rather than by the court. It was the first time I had had that situation.

Q. Did Mr. Jordan tell you in advance whether you were being called in by the school system? A. No, we didn't go into that detail but I had worked on enough on them and he had seen enough of my reports that he knew that I would know how to proceed, I guess, when I got here.

Q. When you got here, were you under the impression that you had been invited by the school system? A. No, I wasn't under the impression one way or the other. It just hadn't crossed my mind.

Q. Had you had any contact with the Mobile school system before you came here? A. Not greatly. I had met the Superintendent at meetings but I didn't know much about the school system.

Q. Other than that, you didn't have any knowledge of the school system? A. No.

Q. What was your opinion, if any, of the Mobile school system before you came here? A. Well, that they had a good school system.

Q. Any other opinion? A. No, none in particular. I don't know that I had even thought [47] about it enough to have an opinion one way or the other.

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Q. Has your opinion changed or is it still the same? A. What is that?

Q. Your opinion, you said you thought they had a good school system.

Mr. Gorman: I think he further qualified that and said he is not sure whether he had an opinion at all.

Mr. Philips: Read back the last two or three questions and answers.

A. No, my opinion hasn't changed.

Q. Okay. That's all right then. What instructions were you given? What were you told to do? What directions were you given? A. I was given the general directions that we needed a report similar to many that they had been doing up in South Carolina, that we ought to have about five or six sections to the report, one giving something of the background of the community, and another giving the basic data about the school system, particularly as it was related to desegregation, some information about the financial structure of the school system, and about the course of study, and then with that as a background, to develop some kind of a plan for desegregation along the lines of the court order.

[48] Q. All right. When you came to Mobile, Dr. Hall, what plan of action or procedure did you— A. I had been told by Mr. Jordan that the financing of the study would be through the University of South Alabama Center, I forget its exact title. It's a project very similar to the one, and that they might have, they would probably have some

information and that I ought to find my way around, have a chat before I started with a Dr. Bjork, B J O R K, who is the Director of that Center, and he might have some information about the Mobile school system, and that I did when I got here on the 10th. I didn't get here until about, oh, 3:30 or 4:00 o'clock. I drove from Orlando, and I reported to him or talked to him briefly and asked him where the school offices were and who was heading up the school program and what-have-you, and then I believe it was the next day that I made contact with Mr. McPherson.

Q. Did you have any specific information concerning the school system, about the school system from Mr. Bjork? A. He had a lot of data, yes. He had copies of the court orders. I guess the Center keeps those for all school systems here, and he had copies of the maps that had, of the July 29th court order, the boundaries for the elementary and junior high schools, and information about the freedom of choice for the high schools [49] and for the rural area, and then he also had a copy of the building study that the court had, that the school system had given to the court which gave a school by school description of each building and, oh, he had data about the number of pupils by grade level in each school that somebody had, I think it had been part of the court order. That information was all on file there in the office and I looked it up.

Q. Did he say where he acquired this information? A. I didn't ask him.

Q. Do you know where he acquired this information? A. I assume he got it from the courts as part of it, or he might have gotten it from the school system, I don't know. It was

just mimeographed, it was duplicated stuff. I assume he got it from the school system but I don't know. I did get myself similar kinds of information from the school system later and it turned out to be, some of it to be the same thing.

Q. Now, as I understand it, your purpose was to conduct, as you described it or as you characterized it, a study of the Mobile school system? A. On desegregation, yes.

Q. On desegregation. And then what to do after conducting the studies? What then? A. To develop a plan, help develop a plan, work according to [50] the—at that point I moved over onto my own and to work cooperatively with the school system in developing a plan, if possible, to be presented thirty days after June the 3rd, so I assumed that was July the 2nd, and so then I met with representatives of the school system, Mr. McPherson, and we talked through plans and we determined that any information that I wanted should be requested in writing and I indicated some of the kinds of data that I would need and then we set up a procedure for proceeding with the planning.

Q. What sort of reception did you get by Mr. McPherson? A. Very cordial, very nice.

Q. Were they cooperative in working with you? A. Certainly in providing all data, yes.

Q. Did you come in, Dr. Hall, with any instructions as to what should or should not be included in the details of the plan that you were going to develop? A. No, sir.

Q. What basis then did you use to develop the plan? A. Well, the basis that we agreed on in conference was that—

Q. No, I mean what—

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Mr. Crawford: Let the witness answer. I object to that. Let him finish his answer.

Mr. Philips: The witness is not responding to my question.

[51] Mr. Crawford: Yes, the witness is answering your question.

Q. What basis were you attempting to achieve that with?

Mr. Crawford: Now, we object to that. A specific question was asked this witness and this witness was attempting to answer it and I don't think the witness was giving the answer you wanted and you interrupted him.

Mr. Philips: I will withdraw that question and rephrase my question, Mr. Crawford.

Mr. Gorman: I'm sorry. I would like for the witness to be able to finish the answer. Finish the answer, please, and then you can rephrase the question.

Q. What were you attempting to achieve when you came into the school system? What result were you attempting to achieve, Dr. Hall?

Mr. Gorman: Excuse me. If I could ask the witness to finish his answer to the question—

Mr. Philips: You will have a chance to cross-examine him on anything you want to.

Mr. Gorman: I think it is improper to interrupt the witness while he is in the midst of answering a question. I request the court reporter to read the

portion of his answer that he was giving and let him determine whether or not he had answered.

Q. All right. Go ahead. [52] A. I don't remember what I was saying.

Q. I don't either, but go ahead.

Reporter: What basis then did you use to develop the plan? Well, the basis that we agreed on in conference was that—

Q. All right. Go ahead and finish your answer. A. Was that the school system being more familiar with the school system and being under the same court order would first develop a plan, and then we would look at that to see what further needed to be done about it. There was disagreement on the procedure from that point forward, and at that point we set up a schedule to do this. I guess we suggested that we would then look at the plan, both the school system's staff and the staff we would have with us for the study, and try to answer three questions from this plan. One, could boundary lines be altered to achieve greater desegregation? Two, could there be any pairing of schools that might achieve greater desegregation? Or three, could the grade levels of any particular school be changed to effect desegregation? And we didn't agree on that procedure so we had to do that part on our own.

Q. All right. Now, what were you attempting to achieve in the development of the plan? A. To achieve as much desegregation as possible.

[53] Q. All right. And what were the priority of factors or values that you had in mind in the development of the

plan? What was the primary objective? A. The primary objective was to desegregate the schools.

Q. To achieve as much desegregation as possible? A. Yes.

Q. What about other educational factors? A. Well, certainly those were involved. I believe we—in terms of the school organization and structure and what-have-you, to fit all those in together as much as possible.

Q. But they were secondary to the achievement of desegregation? A. Not necessarily, no. I mean they were part and parcel of the same thing.

Q. Well, as you set out in your work, where there was a departure and you could remain only faithful to one or the other, either consistent with the objective of achieving maximum desegregation or remaining consistent to educational principles, which was paramount? A. I don't believe we ran across a case of that sort.

Q. Had you run across a case of that sort, which would have been paramount?

Mr. Gorman: That's hypothetical and it calls for a conclusion of the witness based on facts not present in the record.

[54] Mr. Philips: He is an expert witness.

A. Well, I don't know. The schools exist for the purpose of education and the question just didn't, that particular question didn't come up.

Q. All right. What about the relative values of your objective of achieving desegregation and the objective of com-

ing up with a plan that is administratively feasible, which was the most important? A. Again both of them are part and parcel of the same thing.

Q. So you didn't find any conflict then? Everything you came up with was administratively feasible? A. Yes.

Q. And educationally sound? A. Yes.

Q. Okay. Your instructions— A. I might say, I might add on this point that there was some plans that the school system already had that called for the expenditure of sums of money, and we assumed that the school system, since they had those plans, had that money and that the money would be available to spend. I mean I could go specifically. For example, the school system was proposing to build a new high school called Toulminville or something of that sort, and a new elementary school I believe to replace [55] Howard or to add to Howard. Now, it was assumed that those funds would be available to be spent somewhere or the other.

Q. All right. Now, your primary purpose when you came in, were you instructed to develop a plan to desegregate the school system? Is that the primary instruction you were given? A. Yes. That was the court order. The instructions were in the court order. We had the same instructions as the school system had here. We were both working under the same court order.

Q. What information did you gather while you were here? A. Beg your pardon?

Q. What information did you gather while you were here? A. I gathered the information about the schools, their locations, what they, the size of them, their capacities,

and the number of pupils by race in each school, the number of pupils that were transported, the number of members of the faculty of each race in each school, and a whole host of things that are all included, most of them are included in the report. Then I went myself on Saturdays and Sundays to visit. I visited all the schools in the rural area and I visited several schools in the metropolitan area but not all of them.

Q. How many would you say you visited in the metropolitan area? A. Oh, I would say twenty.

[56] Q. Which ones? A. Well, I specifically visited the Vigor and Blount and Carver and Bienville, however you pronounce that school, and also Williamson and Craighead and Toulminville and, oh, I forget all of them.

Q. These are the only ones you can think of? A. The only ones I can think of right off, yes, but there were a number of others I just don't remember.

Q. Who else did you talk to other than Mr. Bjork and Mr. McPherson during the time you were working on the Mobile project? A. You mean since I was in Mobile?

Q. Yes. A. Who else in Mobile?

Q. Yes, with reference to this matter. A. Well, not specifically with reference to this I talked with the dean out there—what is his name, Hadley, a Dr. Hadley? Is that his name?

Q. At the University of South Alabama? A. Yes. Is that his name?

Q. Yes. But specifically with reference to this who did you talk to? A. Well, I talked to some fellow that drove me around all day, a fellow by the name of, gosh, Wheeler, but just about things [57] in general, nothing specific

about it. He took me, he drove me all day long one day, and then they have a young man there in the Center by the name of Nallia. I just talked with him generally about it. As a matter of fact, I did ask him to gather the data and write the material for Chapter One—that is, the Mobile background of it. He went down to the Chamber of Commerce and various other places on that Chapter One.

Q. Who is this? A. Nallia, N A L L I A, Bill Nallia.

Q. And where is he located? A. He is at the University of South Alabama.

Q. Is he a professor or a student? A. I am not sure. He works in the Center, I think.

Q. You don't know whether he is a professor or a student? A. Well, I don't know just exactly what his title is, no.

Q. And he wrote one of the chapters of the report? A. Yes. He wrote the Chapter One or gathered the data for the Chapter One.

Q. All right. Who else? A. Now, you mean, you are talking about here in Mobile or people that I brought in?

Q. No, I am talking about here in Mobile. A. Well, as far as that—well, of course, there were secretaries, [58] I don't even remember their names. We had three. One of them was named—

Q. That's all right. You needn't go into that. Who else? A. Then there was a fellow by the name of Davis, a man by the name of Davis who did some research for us, and—

Q. Where is he located? A. I think he's a student out at South Alabama.

Q. Give me his full name, if you have it. A. Well, I don't have it. Let's see. Don, I believe.

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Q. How would you contact him? A. Don. If I wanted to try to reach him, I would call the University of South Alabama.

Q. And just ask for Davis? A. Well now, wait a minute. I may have something here that would be better. (Pause) But his work was more superficial. He did some mimeographing and some counting, counting figures for us.

Q. You mentioned previously he did some research. A. Looking up this data about this Chapter One. There was a lot of information on it.

Q. Do you know if he is a student or a professor? A. I am sure he is a student, a graduate student. I'd call 344-3400 and extension 286 or 287, but he was not involved in [59] the, in any of the decision making. He just was sort of an errand boy.

Q. All right. Who else? A. That's all.

Q. Did you talk with any school teacher? A. No.

Q. Or any school principal? A. No.

Q. Any student? A. No. I was told to do all my talking to Mr. McPherson.

Q. Or any school patron or citizen? A. No.

Q. Any of the Mobile City Planning Commission? A. I didn't. I think some of our reseachers went down there.

Q. Who did? A. I don't know whether they talked to them or not. I said I think maybe they did.

Q. But you don't know? A. No, I don't know.

Q. Who would it have been? A. Well, it would have been Nallia or Davis or Bjork or some of them who were doing this Chapter One.

Q. All right. Who are some of them? [60] A. I just said.

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Q. When you said, you named three and then said or some of them. A. Or whoever else they might have had. I don't know who they had digging up the—if you have read the report, the Chapter One is about Mobile County, and so we just gave them that project, gave Dr. Bjork that project.

Q. So if they talked with them, it would have been only with reference to Chapter One? A. That's correct.

Q. All right. In your development of the other chapters of the report, did you or anybody else talk with the City Planning Commission on that aspect of it? A. No.

Q. How about the Regional Planning Commission? A. No, sir.

Q. The City Commission? A. No, sir.

Q. The County Commission? A. No, sir.

Q. The P.T.A. Council? A. No, sir.

Mr. Gorman: I will object to all those questions—

Mr. Philips: You are a little late to object to the questions.

[61] Mr. Gorman: And move that they be stricken and the answers in that the question went not only to the witness's knowledge but whether anyone else talked to these people.

A. And also the question was that we were instructed to deal entirely with Mr. McPherson.

Q. Instructed by whom? A. By Mr. McPherson.

Q. You mean to tell me— A. About anything that had to do with the schools.

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Q. Anything from the school system? A. Anything from the school system.

Q. You mean to tell me you did not go to the City Planning Commission because Mr. Pherson had instructed you not to? A. No, sir, that would not have had any bearing on that. I was talking about the schools.

Q. If you had wanted to go to the City Planning Commission— A. If I had wanted to go to the P.T.A. or to the City, or to a school teacher or what-have-you on some of those questions, I would have first asked Mr. McPherson.

Q. And did you ask him to do so? A. No.

Q. What about the City Planning Commission, would you have asked him to deal with them? [62] A. No.

Q. What about the Housing Board? A. No, sir.

Q. Did you consult with them at all? A. No.

Q. Did anyone under your knowledge, anyone working with you? A. Not to my knowledge unless they did it in connection with Chapter One.

Q. Dr. Hall, the desegregation plan now that you have submitted to the court—well, before I go into that, let me pursue another line of thought. We have asked these questions of you concerning your contact with people in Mobile. What about people outside of Mobile, with whom have you had contact in connection with this matter? A. With, we had a Dr. Woodward—is that his name? Yes, Woodward, a Dr. Woodward from the University of Alabama who came in and helped with the preparation or did the major part of the work on the preparation of the chapter on school finance. We had a Mr. Blue from Auburn, Auburn University, who did a lot of work in connection with map making and the development and checking of tables, and—

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Q. Did he come to Mobile to do that work? A. Yes, and we had a Dr. Michael Stolee who came in to help with [63] the desegregation plan itself, and a Dr. Weincoff, W E I N C O double F, I believe, Dr. Weinkoff from the University of South Alabama who also came in and worked with the desegregation plan itself. Of course, Mr. Jordan, and then we conferred with others such as Mr. Anrig and members of his staff.

Q. Mr. Anrig? A. Yes.

Q. Who is he? A. He is the—well, he is the head of all this Title IV business in Washington. Now, just what his title is, I am not completely clear but he is the head man anyhow. He would be what—excuse me, do you know his name or title?

Mr. Gorman: I am not sure whether he is called the director. He is the head of all the Title IV operation there.

Q. Dr. Anrig? A. A N R I G, Gregory, Mr. Gregory Anrig, or Greg, we called him Greg.

Q. And other members of his staff, you said? A. Yes. I don't know their names.

Q. How many other members of his staff? A. Oh, I would say three or four others.

Q. Were they here in Mobile? A. No.

[64] Q. Did you confer with them up there or by telephone? A. No, in New Orleans.

Q. In New Orleans? When was this? A. Saturday, I think it was the 29th.

Q. The 29th? A. June 29th.

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Q. Okay. To whom did you report directly with reference to your work? A. Mr. Jordan.

Q. What was your purpose in conferring with Mr. Anrig? A. Well, Mr. Anrig is Mr. Jordan's superior. He is the representative of the Office of Education and would have to assume, I guess, final responsibility for anything we do.

Q. And what was the nature of your contact with him? What did you do? A. To review the general developments of the plan.

Q. Did he give you any instructions or directions or suggestions? A. There were some, yes.

Q. What? A. One of them to stay away from expressing my opinion on legal matters.

Q. What else? A. I had something in there that this, according to the court [65] this seems to, according to our interpretation what the Judge said seems to mean so and so and he just said that wasn't our business, to let the lawyers do what the things were. I think you would probably find that further information about him would be better obtained from Mr. Jordan because I was in and out of the room a good bit of the time working on two or three different things. I know you have subpoenaed Mr. Jordan so I would think you would get more information from him on that.

Q. Perhaps I will go into that with him but I would like to know from you what the nature of your contact was and what instructions he gave you? A. We had written a preliminary report and he made a few suggestions. The only one I recall specifically is the one I just remembered, though I do remember there were two or three other points of a similar kind. I guess two or three times in something

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I had written I had made reference to the law and what-have-you and he told me to stay away from that, to let you lawyers do that.

Q. Did you report to him and at that time did you have a map indicating— A. Yes.

Q. What you had developed? A. Yes.

[66] Q. Did he suggest any changes in these, in the substance of your approach? A. Yes.

Mr. Gorman: This is—okay, fine, go ahead.

Q. What suggestions? A. Well, one of them, and I notice it is still in the report—

Mr. Gorman: Let me state here that this is hearsay and my objection is a running one to the conversations as might have been or what might have been said to Dr. Hall.

A. There is one on page ninety-eight that is still in the report. We didn't get it out of the written. We got it out of the map, but I wanted to correct that one thing. Under a school called Whistler it says the Whistler attendance zone is made up of two non-contiguous areas.

Mr. Crawford: What page are you on?

A. Page ninety-eight. That should be struck because at the time I remember there was a plan to, the basic plan had, there was some more room in that building and they were looking for room, and the plan had taken some students in a very round-about way to that school, and he thought that

was impractical and should be eliminated. It was quite an involved procedure. It wasn't just going from one place to another, but in order to get there, you had to go way around the country. You couldn't [67] there like the crow flies or anything like that.

Q. A you-can't-get-there-from-here sort of situation? A. That's right, and he thought that was impractical and thought it should be eliminated and we did eliminate it from the map but I note it's still in there. That first sentence ought to really be struck.

Q. He was the one that you submitted your entire preliminary plan to for approval? A. Yes.

Q. And this was on the 29th of June? A. Yes. I think he also made the suggestion there, if I recall right, and I want you to verify this with Mr. Jordan, that the legality of transportation was a matter for the courts and for the lawyers to decide and we ought to put some kind of statement in there to that effect, that that question needed to be answered by the court and not by us, and the court had said you can, had said desegregate the schools. Now, they didn't say do it by transportation and they didn't say to use transportation or not to use transportation but it was very evident that, if you were going to desegregate some of those schools, you were going to have to use some transportation. Now, that one there never has been a clear-cut answer on it. They just said desegregate them but not how.

[68] Q. This preliminary report you submitted, did he keep that or did he return it to you? A. Oh, we brought it back.

Q. Who has that? A. I don't know who has it.

Q. Who had it when you last saw it? A. About ten different people. I mean we were, we took the preliminary

report and then we started mimeographing it with corrections. We had another lady from the Washington office who was very good at editing and, at least I thought so, I have found a few mistakes in here, but at any rate she just took it apart and handed some to one, we had three secretaries and some to one and some to another. We were in a rush to get the thing mimeographed. We had then at that point set up a conference for Tuesday morning and we had to be ready for that conference.

Q. Where was this work done? A. At Brookley, Brookley Air Force.

Q. This is where you made your headquarters? A. Yes. There were some facilities out there that are owned by the University now, I guess. They were in the process of changing it, by the University of South Alabama. Now, the University of South Alabama was not involved in this study [69] directly except the parts of the thing, except the financing of the thing. They have a Title IV project.

Q. How would I get a copy of this preliminary report? A. I don't think you can.

Q. Has it been destroyed? A. I would assume so because I mean it was not considered to have any value. I have some parts of it in here, some parts that I had written that in my personal pride I thought were better than some of the things were edited into so I just kept them in case I needed to use them again, but I have got some parts of it right in here. I've got a part of Chapter Five in here. Although at the time we talked over there, the best thing we had was the maps and we talked from the maps and not from any preliminary draft. We had a preliminary draft of all of the chapters except the Chapter Five. I had

written some stuff, some material for the Chapter Five which I had sent to Mr. McPherson for his review, just a kind of an outline, and I think this was Mr. Jordan's decision, he didn't like it so he substituted or they substituted other material for this Chapter Five so it never did get into the report.

Q. Do you know who wrote this other material? A. Yes. Different ones helped.

[70] Q. Who composed the other material? A. Well, I would say the primary composer was Mr. Jordan. I helped write some parts of it, and Mr. Weincoff wrote good parts of it, Dr. Stolee wrote some parts of it, or at least the data or the information about it.

Q. All right. While you were in New Orleans with the maps in your discussion with Mr. Anrig, were changes made in the maps as a result of these discussions? A. The one thing about those kids going up to Whistler, that change was made, and then the plan for the rural area, they asked us to review that again and made some suggestions about what to do if we could.

Q. Who asked you to review it again? A. Mr. Anrig and some of the people on his staff.

Q. What was wrong with it? A. Well, there was an all-white—let's see. Two or three things came up. One, whether Calcedeavor was a black school or a white school, and then another one was that there was a school called Griggs that was all-white and a school just—what is it, an island, some island—Hollinger's Island was virtually all white. There were a considerable number of blacks in Davis and Burroughs, and they just asked us to check to see if there wasn't some kind of way where some of those pupils

[71] could be placed in Griggs to integrate Griggs and Hollinger's Island, to see if we could, and I guess on the final analysis we did not. We drew an arrow and said if it could be done, do it but that we did not have time to finish that.

Q. You did not have time to make the determination? A. To make the determination, that's right.

Q. All right. Who else did you talk to besides Mr. Anrig and the several people you have mentioned? I believe you said there were several others. A. Yes, sir.

Q. Who else have you talked to outside of Mobile? A. I think that is all. That is all I can recall right off.

Q. Now, Dr. Stolee and Dr. Weincoff, when did they come to Mobile? A. Weincoff was here—well, they both were here Thursday and Friday, the 26th and 27th.

Q. Thursday and Friday, the 26th and 27th of June? A. That's right.

Q. Had they worked on the project prior to coming to Mobile? A. Yes, they knew they were coming and we had sent them just some preliminary data, like I had sent them a copy of the material and the rough draft we had on it up until that time to give them a little background on the situation. We had all the maps. Mr. McPherson had given us spot maps of the [72] metropolitan area and we had all the maps, and then we—

Q. Excuse me. By spot maps you mean maps locating the— A. Pupil locater maps, I believe you all call them, yes, and really are by numbers rather by spots, and then we also had the proposals which the school system had made in compliance with the court order, together with the figures that, with the approximate figures that would

be in each school, and we had all of that data which was available and worked from that data in interpreting any new kind of arrangements that could be set up.

Q. Who actually drew—Dr. Stolee and Dr. Weincoff then worked on this on Thursday and Friday when they were in Mobile? A. Yes.

Q. Who actually drew the maps setting out the attendance areas represented by your report? A. Well, I would say that that was a sort of a cooperative undertaking. We would sit there and look and study and analyze and somebody would go up and say could you do it this way or could you do it that way.

Q. All right. When were these drawn? A. When were these maps drawn?

Q. Yes. A. On that Thursday and Friday.

[73] Q. All right. Who were the people—you say it was a cooperative process. Who were, name the people who were involved in this cooperative process? A. Well, I would say the ones who were involved in the line drawing were those four, Stolee, Weincoff, Jordan and Hall.

Q. By Hall you are referring to yourself? A. To myself, yes, and the—

Q. And the decisions where to place the lines? A. Well, we had some other people like Mr. Blue that we would say if you did this, how many people are involved and so they would go count.

Q. Checking the figures? A. Yes.

Q. Who was involved in the decision making process as to where to locate the lines? A. The four.

Q. You and Dr.— A. Stolee, Weincoff and Jordan.

Q. Okay. When did Dr. Stolee arrive in Mobile? A. On Thursday night.

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Q. And when did Dr. Weincoff arrive in Mobile? A. Thursday noon about, right after, shortly after noon. Incidentally we worked practically all night that night plus practically [74] all night Friday night and all day.

Q. Do you think the desegregation plan that you submitted to the court is the best desegregation plan for the Mobile public school system? A. I would think that there could probably be some adjustments in it that would improve it.

Q. Do you think you had adequate time to do what you were called upon to do? A. In terms of what we did, yes.

Q. What did you do? Explain your answer a little bit further. A. Well, we proposed certain things that could be done in one year, and then we—that is, starting September the 1st, certain things that could be done. We proposed certain other things that could be done a year later, but we stated that the boundaries might have to be shifted one way or the other a little to get your figures and capacities right.

Q. Is this because you didn't have time to locate them specifically? A. That is part of it. Part of it is between now and then there will be some changes. I mean there are changes every year.

Q. Well, I am talking about September now. You have recommended something for September. There won't be any change back and forth between now and the opening of school in September, [75] will there? A. There could be, there could be. Just like in the July 29th court order you went back to the court and got a change made in one of the schools, Morningside School, and so if some obvious improvement could be made, then it could be adjusted

or it certainly would be my recommendation that were adjustments were warranted, that the court ought to permit it.

Q. Well, the maps you have submitted then don't represent any definite recommendations as to locations or lines? A. Yes, they represent a definite location but they also indicate that the probabilities are they may have to be shifted a little. I have never seen a school system yet where you didn't have to make some adjustments, but the basic ideas are all there and sound and I would think that probably the people in the school system could make some adjustments one way or the other.

Q. For what purposes, why would you make adjustments, in order to reconcile school capacities with the enrollment— A. Yes.

Q. Based on the lines? A. Yes.

Q. What other factors would you think would necessitate an adjustment? [76] A. Well, that is the only factors I can think of right off.

Q. So the only reason you didn't definitely locate the lines then is— A. We did definitely locate the lines but we said that also that there might need to be slight adjustments in them.

Q. Do you think you had sufficient time to develop, to do the work you were called on to do? A. No, sir, there is never time to do anything thoroughly. I think there was sufficient time to develope the basic concept but I don't think there was sufficient time to work out all the details.

Q. What was the basic concept that you developed with reference to the rural schools? A. Well, the basic concept there, we took the proposals made by the school system to see if they met the desegregation plans and then made adjustments in them where we didn't think they fully met

them, and we made one that just seemed like better administration but that was not really a desegregation matter.

Q. What changes did you make in the school system proposal? A. In the rural?

Q. Yes. A. In the rural we changed Burroughs which was virtually an all-black school down near Theodore, if you know the school, and [77] it was a one to six virtually all black and we said we could not go with that, there had to be an integrated school, so we made it a six to eight school instead of a one to six and took the junior high out of Theodore and put the junior high in Burroughs, the seventh and eighth grade, and the sixth grade out of Davis and put it in Burroughs and then that integrated all of the schools. At the same time in a personal conversation with Mr. McPherson I said if you've got a better way to do this, just to get it integrated, well, that will be fine but we just couldn't leave it all black.

Q. The only reason for the change then was to avoid leaving it an all-black school? A. Yes.

Q. What other changes were made? A. Well, the only other changes we made, we suggested that the seventh to twelfth, I mean the sixth through eighth attendance lines in, for Citronelle be the same as the senior high, and then the consolidation of Mount Vernon and Delsaw be for a one to five setup but also include Calcedeaver in the one to five, and then drop down a little further south and pick up some of the Lee students.

Q. Why was this change made? A. Well, it seemed like better administration, better operation. [78] The Calcedeaver children were virtually all on busses already. That whole school is transported already and it just seemed

like a better operation to us to put it that way. Now, there was a big question came up, though, about the Calcedeaver children are listed as white and Delsaw, the Delsaw-Mount Vernon area is predominantly black, and by putting the Calcedeaver children in you've got a greater number of white, these people who are classified as white. I don't know whether they are white or not.

Q. And you recommended closing the Calcedeaver school? A. Yes. Now, the County plans, their general plans were to build a one to eight school, a consolidated school to replace Delsaw and Mount Vernon.

Q. For September? A. No.

Q. Well, let me ask you this: The change that was required or recommended in connection with the Burroughs School that you have mentioned and Calcedeaver, in Burroughs was in order to avoid having an all-black school. Who made the determination that a change would have to be made in order to accomplish that result? A. Mr. Jordan and I.

Q. Did you feel that it was necessary to avoid having an all-black [79] school? A. Yes.

Q. Did you feel that the court order requires that? A. Yes.

Q. Can you show me in the court order where it says that? A. Well, it just says maximum desegregation or something like that or positive or whatever the words are.

Q. Did you interpret that to mean that you must eliminate— A. Black school wherever possible.

Q. All-black schools and all-white schools? A. No, sir. I didn't interpret it that way but wherever possible.

Q. Wherever possible? A. Where you could do it, do it and we felt that this was one place that it could be done.

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Mr. Gorman: Let's take a short break.

Mr. Philips: All right. Let's take five minutes.

(Recess)

Q. We were talking about, I guess, the Burroughs situation and the sole reason for requiring the change in what the School Board proposed there was to avoid the existence of an all-negro or all-black school? A. That's right.

[80] Q. Was that the primary criteria that you used in your development of the whole plan? A. Well, that was what we considered the court order was all about, yes.

Q. As I understand it, the court order talked in terms of desegregating the school system, not eliminating all-negro or all-black or all-anything else. A. Well, there again I don't want to get into interpreting legal matters, but all that preface that went on before the thing where he threw out all your boundary lines, where the Circuit Court, you had drawn boundary lines, the Judge himself, as I understood it, for the elementary and the junior high schools for the metropolitan area, and the way I read it in the preliminaries to it, they had thrown everything out and said start over or words to that effect, and then he said, I don't know, what are those words, positively or affirmatively or something like that—

Mr. Crawford: What court order are you talking about?

Mr. Philips: We are discussing the one he was working with.

A. The June 3rd.

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Mr. Crawford: June 3rd?
Mr. Philips: Yes.

A. The June 3rd court order said positively or aggressively or [81] something.

Q. Well, that's all right. I know what the order says. I was just interested in your interpretation of it and what you would— A. Well, I was told not to but you couldn't help but do a little of it.

Q. Well, you have got to interpret it to know what to do, haven't you? A. That's right, and it just seemed to us, it seemed to us to say or it seemed to me to say, and everybody else in this, that what you have done isn't satisfactory, now do more, and that seemed to be the meat in the coconut so far as the court was concerned.

Q. Among the doing more did you interpret it to mean the necessity of eliminating any school that was all-black or any school that was all-white?

Mr. Gorman: I am going to object to that question. You are asking this witness, who is an educational expert, to give a legal opinion—

Mr. Philips: I am asking him to give the basis upon which he proceeded and he's got to proceed on some assumption or on the basis of some criteria, and I don't mean to be argumentative but this is what I want to know.

[82] A. Well, the basis on which we proceeded was to eliminate as many black schools as you could within reason.

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Q. As the primary criteria? A. Well, that that is what the court order was about.

Q. Is that what you took as the primary criteria? A. Yes, and by within reason, I mean with a sound educational program.

Q. What about the elimination of all all-white schools, was that also— A. That would be a question of philosophy which I expressed my opinion on, that I personally thought that I had not seen anything in the courts about eliminating all-white schools. There was some kind of opinion that the Fifth Circuit rendered sometime ago that said there wouldn't be any all-black schools but we wound up, as we said here, with five and we couldn't see any way within reason of eliminating those five. Now, I don't know whether the court will throw it out and say eliminate those five or whether they will—I don't know what they will do with it but we said we did the best we could.

Q. Now, you said just then you hadn't seen anything in the courts about this, that or the other, I don't remember the exact proposition. A. About white schools.

[83] Q. You are then drawing on your interpretation of court decrees in formulating your criteria as to what you did? A. Yes, you have to—

Q. Your interpretation of court decrees, not only this one but other court decrees, is that correct? A. Yes, that's correct. That's correct and—

Q. What criteria did you use, if you will name them, in arriving at the attendance areas that you recommended to the court? A. The criterion of promoting as much integration as possible, together with a sound administratively feasible educational program.

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Q. All right. Promoting as much integration as possible— A. And with no greater expenditure of funds than had been previously contemplated by the school system.

Q. All right. What are the specific criteria that you adhered to beyond promoting as much integration as possible? A. Well, we—

Q. Specific criteria. Just to say a sound educational program is— A. Well, we used as a guideline that the school system was trying to work toward a one to five system, a one to five elementary setup. Then we ran into places, all right, could you pair without interrupting that one to five sequence— [84] that is, have maybe two grades in one school and three in the other, and so we decided that was still within the framework of sound educational policy, that you could so pair, and if that would produce greater desegregation, that could be done, and so also the question came up—

Q. Let me ask you this, and I will let you go ahead and enumerate the others, but let me ask you about that one. Would you ordinarily recommend such a pairing as you have described if you weren't dealing with the desegregation process? A. No.

Q. All right. Go ahead to the next one. A. But we were dealing with desegregation.

Q. Go ahead with the next one. A. Then the question came up then about the Blount-Vigor thing, as to whether it wouldn't be better to make one of them say just a ninth and tenth grade school all by itself and the other one an eleventh and twelfth grade school all by itself, and we realized the problems you run into with extracurricular activities and athletics and bands and what-have you, and

they were so close together as the crow flies, about two-tenths of a mile between those two school grounds. It's a long way around the way you have to drive, that we thought that for their extracurricular programs and things that involved all [85] of them together, but the school system in its operation would probably basically put all ninth and tenth grades in one place and all eleventh and twelfth graders in the other so that it wouldn't have to be a complete changing of campuses between every class and every period.

Q. So you basically paired these schools? A. Basically but put them together administratively for anything they needed to be together administratively for, and the same thing was true in—what was it—Williamson-Craighead. Williamson and Craighead was—yes, Williamson and Craighead.

Q. Would you ordinarily do this sort of thing in a school system except for the desegregation process? A. No, I wouldn't think you would. Unless you had that in mind, you would not.

Q. What other criteria now did you adhere to? A. Well, I think I have named them.

Q. Okay. Those that you have named are all the criteria that you adhered to? A. They are all I can think of at the moment.

Q. As a basic principle do you believe a liberal transfer policy is a desirable thing in a school system? A. Before school starts.

Q. Before school starts? [86] A. Not after school starts. I believe once he has made his course, he ought to stick to it for a year.

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Q. In your development of your study and recommendations did you have knowledge or gather knowledge concerning the Board's long-range plans in connection with the school system? A. A good many of them, maybe not all of them.

Q. Where did you acquire this information? A. Well, one was in this report to the, that the Board submitted about its plans for the use of the different, that the school system submitted to the Court about its plans for the use of buildings, and particularly in the rural area I talked with the people at the School Board about what they saw the developments were.

Q. Who specifically did you talk to? A. Mr. McPherson specifically.

Q. Did you have any other source or any other knowledge concerning the long-range plans? A. No.

Q. What do you consider, Dr. Hall, as a desegregated school system? What do you consider an integrated school system? When have you achieved an integrated school system?

Mr. Gorman: Now, I will object to that question. That is a legal question and this witness doesn't have the cognizance or the [87] expertise to—

Mr. Philips: He was told to achieve a desegregated school system and he acted toward doing that. I would like for him to tell me what he was attempting to do and when he thinks it will have been accomplished.

A. When you have gone just as far as you can to relieve desegregation within reason.

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Q. Would you give me an example of this? A. Now, I don't know what the—you see, this thing has changed as we have gone along or maybe it has been clarified, I am not sure. When we first started off, it dealt only with pupils, it didn't deal with staff at all the first few years of these court orders, and then it got into staff. I remember the first court order that we had, that all we had to do was just to notify every pupil that he could go to whatever, that he could apply to go to any school that he wanted to. That was the first court order. Then as they have moved this thing along, they have gotten further and further or more stringent in their interpretations. Now—

Q. So you have a changeable standard, I gather? A. Yes, I think—I don't know whether you would say the rules have been changed or the rules have been clarified but, for instance, at one time in our own school system we had a de- [88] segregated school system by the definition at that time but by the present definition it's no longer desegregated, so you get additional understandings. Now, so far as I am personally concerned, when you have gone just as far as you can possibly go within reason, then you have desegregated. Now, it could well be, though, that we left these five all-white schools and it could well be that the court would say that that is not going far enough. At one time you could ask yourself these questions, and if you could answer them affirmatively, you were all right. One, if we hadn't had a dual school system, would I have built this school in this particular spot, and if you said no, it wouldn't have been built here, then you eliminated that school and then you had that problem resolved.

Q. You mean you closed that school? A. If you closed, if you eliminated that school, and now, now the question

is coming up all over the country, as you know, and certainly we have it in our own community and I haven't seen the answers to it. If you have a community of say three miles wide and seven miles long and it's solid black and there are twenty-five thousand pupils in it and you need to build some schools, should they be built in that community or should they be built out somewhere else in order to achieve desegre- [89] gation, and that's a problem that is confronting the whole educational profession and the answers yet are not clear cut on that.

Q. What is your opinion? A. If you—excuse me, there's one other question I said you could ask yourself. Have I made any distinction because of race, and if you answered that no, but the general interpretations, as I have gathered along at least for a period of time, I don't know how long this will be, but in the process of eliminating the dual school system, you must not only, you must take race into consideration. It's a paradoxical point but you must count noses and take race into consideration rather than just ignoring race, and you must do that both for faculty and for students, and I assume that there would be some ultimate time out here after you achieve your goal, then when you would completely ignore both and proceed along that point, but there is a period of time that we are going through now where the courts are saying you must take race into consideration. Now, excuse me, but I wanted to bring that out. Now, what is your question?

Q. Well, I was trying to get around to get you to tell me, if you could, when you have a desegregated school system. What is a desegregated school system? [90] A. Well, that one I have been trying to find out.

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Q. And you can't tell me? A. No. That is one question we are asking you all to try to get the court to say here if—you see, this court has ruled, as I understand it, it seemed to me to be a sort of an in-between thing in some decisions that there would be no all-black schools in the south or in the Fifth Circuit, and I have racked my brains how you could do that, and they haven't spelled out, they haven't said you have to bus to do it. They just said there would be none. Now, in this proposal here there is some bussing introduced. It's a minimal amount and we did not go so far as to go what we call cross-bussing. We were —well, we just haven't reached the point, or at least I haven't reached that point in my own philosophy to think that is good educationally, to haul people out of one community and out of another. Now, we did one-way bussing but not cross-bussing in this proposal and we did it in those places where the school system was proposing to build, to put new construction—that is, in this plan, in this write-up that I am talking about they were planning to replace the Emerson School, said they had been wanting to rebuild the Emerson School a long time, and we simply said if you are going to have desegregation, the place to build it is not there, but [91] build it over here so you would have the same capital outlay cost to build it over here, and the same thing with Howard, and the same thing with Toulminville.

Q. You refer to the same capital outlay cost. Do you take into account there the fact that in one instance over $200,000.00 and the other almost $200,000.00 in land acquisition which will then be lost at those existing sites? A. Well, I wouldn't say those would be lost because, if they

cost $200,000.00, then they have that value, either to some other public agency or to some private group if they wanted to sell, and the chances are you could buy additional sites, at least this has been my experience, I haven't checked it here in Mobile, for whatever you could realize, you could buy more land out than you could in because the land in is usually higher than the land out, and I am all in favor of keeping land in in the hands of some public agency because we are running into the shortage of parks and everything else in facilities, but—

Q. Did you make any studies of land values in Mobile? A. No, sir.

Q. Did you make any inquiry into land values? A. No, but I am just going on what is generally the situation.

Q. All right. We have gotten kind of far afield from the orig- [92] inal question that I have asked you. Let me try to— A. Excuse me. Let me get back here. You originally asked me what did this court order say and I understand that—

Q. That's all right. I am confident that you can read the court order to me. A. And I was going to tell you what I thought it meant. We keep coming around to that.

Q. You can't now tell me what you thought it meant without reading the court order? A. Well—

Q. Well, can you or can't you? Can you tell me now without reading the court order? A. Yes.

Q. What? A. I have already told you.

Q. Okay. Then there is no point in reading the court order. A. All right. (Pause) This is all the preliminaries, isn't it? Where does it get down to the order itself?

Mr. Crawford: The meat is right over here.

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A. I don't find what I am hunting anywhere. Anyhow, they threw out—what I was simply saying, that I interpreted it to mean—yeah, there are the words that I am looking for right there. I wonder why I couldn't see it. "The District Court shall [93] forthwith request the Office of Health, Education and Welfare to collaborate with the Board of School Commissioners in the preparation of a plan to fully and affirmatively desegregate all public schools in Mobile County, urban and rural." Now, that—

Q. That is what I asked you. A. Yes.

Q. Can you tell me when you fully and affirmatively desegregate a school system? A. Well, that is what we thought this plan did and I am also saying that the Court may say it doesn't, but when we had gone as far as you could within reason in the desegregation of the schools, and by in reason—

Q. And what do you mean by that, "going as far as you can in the desegregation of the schools"? Does that mean simply getting as many negro children with as many white children, or what does it mean? A. That is—yes, providing student bodies that are racially mixed.

Q. On a ratio or what? A. I guess in your preference, if you had your preference, yes, it would be the ratio of the whole thing but you can't do that within reason, at least I don't think you can.

[94] Q. But that would be the ultimate that you would shoot for? A. Yes, I guess you would say that that's, it seems to be what the court is saying, at least in my interpretation of what they are saying, and you are asking me what I feel about that.

Q. Do you feel then under the court order what you are required to try to accomplish then is a racial balance

in the school system based on a ratio of the total student population? A. That would be the ultimate, yes.

Q. Then you think that was what you were supposed to work towards? A. We were supposed—I thought we were supposed to work just as far as we could to creating a desegregated situation, yes.

Q. And by a desegregated situation you mean a racial balance? A. A racial mix, yes.

Q. A racial balance, a ratio? A. Well, I guess if you could take the ultimate, you would say a balance but we certainly didn't come up with any balance.

Q. Well, what I am talking about is what you were working towards. A. Well, we were working towards a racial mix.

Q. To desegregate the school system as far as you could? A. Yes.

Q. And that you interpreted to mean ultimately, in the ultimate, a racial balance? A. No, we didn't interpret it to mean—

[95] Mr. Gorman: Wait a minute. You have asked that question at least forty times during the—

Mr. Crawford: A racial mix and not balance. You are leading him by trying to get him to say balance.

Q. When you have got a racial mix, when can you tell me that the racial mixture is a desegregated school system? What racial mixture is a desegregated school system? A. I have no guide to just—if you have a considerable number of both races in a school, then you have a racial mix but I wouldn't set a definite percentage.

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Q. So then you don't think there is any definite percentage? There is nothing the school system can look to and say we have done all we can do, as you phrase it? A. That's right.

Q. Now, what about the resegregation? Suppose you do all you can do and then human nature takes its course and people resegregate—

Mr. Gorman: Now, I will object to that.

Mr. Crawford: We are going to object to that because that calls for some facts that are not in issue here. That calls for what would happen in the next twenty years or ten years, and this man was ordered to follow the decree as of now, and I think that is asking for a supposition that he is not compe- [96] tent to answer.

Mr. Philips: He says that he has experienced the phenomenon of resegregation and I would like his opinion on it.

Mr. Crawford: Only as it relates to a general area but not specifically to Mobile, and that is my objection.

Q. What do you do when you have resegregation? Do you still have a desegregated school system or do you start over again? A. Can I talk now? I mean I was waiting until—

Q. Yes. I am not trying to bewilder you with it but— A. Yeah. Well, basically what you are saying is can you ever say that you have arrived and the problem is solved and I used to think you could say that about a lot of school problems but I believe this is probably one of

those problems where it is going to be a persistent problem just as the education of children is persistent, and probably there would have to be further adjustments made at some time in the future.

Q. Okay. Now, if you will, you have the court order in front of you— A. Now, there was a big argument over in Columbia, over in South Carolina, they were telling me about as to whether de facto, about de facto and de jure. If it was de jure, then that was caused by a school that was built for blacks and it had to be eliminated. If it was de facto where it had developed, [97] but I don't know what the decision was or whether there has been any decision or whether there is a difference in it or not.

Q. Is there any significance to you in this? A. Well, it was in a way. We are talking social philosophy now a little bit—

Q. Well, let's talk education. A. Well, you have to, in order to talk education you have to take some of the other problems of society into mind also and relate education to the society's problems. Now, actually I guess what people say now is that the black man has complete freedom of choice as to where he will live, but that time hasn't quite arrived yet either in spite of—I mean I just know of a number of cases in my own community, and I am sure you can find them in other communities, so sometimes society itself is responsible for the resegregation as such.

Q. Well, let me ask you this question: You have the court order there. If you will, show me in this court order where it calls upon you to make recommendations with reference to desegregation of faculty? A. That is in that basic statement that I just read you.

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Q. Read it to me again, if you will. A. Positively and—what were those words? You found it. I [98] couldn't find it before. "Of a plan to fully and affirmatively desegregate all public schools in Mobile County, urban and rural".

Q. And you interpreted that to mean the involvement of faculty also? A. All other court orders deal with faculty and students. Every one of them I have seen. As a matter of fact, prior court orders in this case have dealt with faculty. They weren't mentioned here but I just assumed that it did but whether—

Q. Were you aware of whether or not faculty had been an issue before the court when this court order was issued? A. No, sir. All I read was that statement that says to prepare a desegregation plan, and a desegregation plan, all of them that I have worked on, both in court and out of court, and I have worked on a number, is not considered complete unless it involves staff.

Q. Did someone tell you to include staff and faculty? A. Well, I guess—I raised the question with Mr. Jordan and he said yes, he said we should.

Q. Was it called to your attention that this court order didn't mention faculty specifically? A. Yes.

Q. Was it called to your attention that faculty was not an issue [99] before the court when it issued this order? A. Yes.

Q. Who called that to your attention? A. Mr. McPherson, I think it was.

Q. Did somebody else call to your attention any counter-information indicating that that was incorrect? A. No, nothing other than just this statement we read here, pre-

pare a complete plan, and I have seen no plan yet that has been acceptable in court or out that didn't include faculty. However, if it's a moot issue, that would be up to the court, but we just considered that a part of what we were asked to do.

Q. Okay. Did you go to court and ask for clarification on it? A. No, sir.

Q. Who did you ask for clarification on it, anybody? A. Just ourselves. I would like to go to the court but I wasn't sure about protocol. I mentioned this to the—I would like to ask the court several questions but I didn't want to, I didn't know whether you were allowed. I would like to have asked the Circuit Judge here just what he meant but it would be questions you are asking me and I think would be better asked of him, and if he would say, then we would all know which way to go.

[100] Q. That is interesting. In dealing with the faculty aspect of it, did you have occasion to review the existing personnel policies of the School Board? A. Yes. Well, not in detail. I reviewed some of them.

Q. What did you review? A. The basic general plan. I guess I did this more by talk than I actually looked at any written documents. I don't remember looking at any written documents. I don't remember looking at any written documents on it, just I talked with them about what the plans were.

Q. Who did you talk to? A. Mr. McPherson.

Q. The only information you have then on the Board's personnel policies is from your discussion with Mr. McPherson? A. That's correct.

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Q. Did you ask him if the Board had a definite personnel policy overall? A. I don't recall whether I did or not.

Q. Did you think that relative to inquire whether they might have some existing policy before recommending a new policy? A. Not particularly. I judged—I did read in the court orders, the court order of March 12th some year, I believe it was, that had some materials in it about faculty. I can verify that if it's important.

[101] Q. If it's in the court order, then it's before the court.

Mr. Gorman: I think all of this is set out in the plan as well.

A. Yes, I believe it's in the book there, what the court order of March 12th—March 12th, yes, that's right.

Q. All right. This is a court order. Let me ask you—A. But I didn't know whether this court order still applied because in the July 29th court order the Judge just made a passing remark about faculty and activities and buildings, I believe. He said they were covered in a previous court order, and I didn't have the Judge Thomas's order but in discussing it I gathered that his order was based upon the March 12th—

Mr. Gorman: Could I help him?

A. The March 12th Circuit Court.

Q. You needn't read the order. A. Oh, yes, I am sure you know it by heart.

Q. Yes, I've got a copy of it. A. Yes, so I assumed that one still prevailed.

Q. You didn't inquire about any additional policies or any written policies then overall dealing with faculty and staff that the School Board might have? A. No.

Mr. Philips: Let's take a short recess.

(Recess.)

[102] Q. Let's put this on the record. If you will, restate what you have just said.

Mr. Crawford: Now, I am going to object to this unless a specific question is asked. He was saying that this was off the record and we were supposed to be in recess.

Q. All right. That section of the report dealing with faculty, does that reflect your wording of that report, that portion of the report? A. No, sir. There are several topics there that I would have changed the "shall" to a "should" —in other words, as a suggestion rather than a seeming order.

Q. You would then change, where what you have submitted, the report, says "shall", you would change it to "should"? A. Yes.

Mr. Crawford: Where is that found?

A. Right there.

Q. Whose wording is that, Dr. Hall? A. Mr. Jordan, I guess.

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Q. You don't know for sure? A. 106. No, sir. All I know is I got it from him and the only—well, it's sort of an insignificant point but—

Q. Who wrote this section on faculty? A. The principals, teachers, teacher aids and other staff who [103] work directly with children of a school shall be assigned, and I would have just said "should be assigned", that's all.

Q. Who wrote the section on faculty? A. Mr. Jordan.

Q. Mr. Jordan? Okay. A. I had written a previous section that was rougher than this and he—well, it had the shall and the should, but the final ruling was that this one would replace that.

Q. What portions of this plan did you actually, do you take credit for? A. As the sole author?

Q. Yes. A. Or as the principal officer?

Q. Yes. A. I would take credit for Chapter Two—

Q. What chapter is that? A. In its entirety.

Q. What chapter is that? A. That is the status of things as they now are. I would take credit for reviewing Chapters One, Three and Four, which are the background for Mobile, I mean I did editorial work on that and made several changes, and Chapter Three I made some changes, that's the finance chapter, and Chapter Four, I take [104] about half credit for Chapter Four.

Q. Which chapter is Chapter Four? A. That's the course of study.

Q. Which is the chapter with the recommendations for the attendance areas and the lines and— A. That's Chapter Five. Chapter Five, I would take—well, that was a cooperative project. I would have to take full responsibility as the director of the study for Chapter Five and

also this chapter here. I just said I would have changed a few words.

Q. You take full responsibility for it but whose work does it represent? A. Well, it represents the combined work of these, this Chapter Four, of these four people, I mean Chapter Five of the plan, the combined work of the four people I mentioned before, Stolee and—

Q. Who made the primary decisions in the location and composition of the attendance? A. Well, the final decisions, the head man was Mr. Jordan.

Q. Who made the working decisions? I am sure he had to approve it, he had to approve anything you did. A. The working decisions on what?

Q. On the location of attendance area lines, the composition of— [105] A. That was a cooperative thing. I don't know if you can understand that fully but here are four people working together and you try out something here and try it a different way, and to say which one did the final thing, I know of no way to say that. That was a cooperative thing, and Chapter, this section on personnel, the prime officer was Mr. Jordan but all of us—

Q. The same four? A. Pitched in—no, I'm sorry, just the two, plus Mr. Anrig.

Q. Okay. Now, did Mr. Anrig have to approve everything? A. No, except in broad terms. I guess he would be stuck with everything that is in it but it's just like President Nixon is stuck with everything that everybody does but—

Q. But these things were submitted to him for review, were they not? A. Yes, and he was, at the same time he was reviewing about twenty other plans so he was dealing in broad general things and not—

Q. Twenty other plans across the country? A. Yes.

Q. Do you know what other plans? A. Well, Louisiana and Mississippi—Louisiana, I guess. They were in New Orleans so I guess they were working in Louisiana [106] or in New Orleans particularly.

Q. Was there an effort made to make these plans coincide? A. No, no effort made to make them jive. However, I think there are certain standard wordings that crop up in a number of reports.

Q. A canned form or a standard phraseology? A. I imagine that, I guess I've done myself, I said I had done about ten counties. Now, I usually alter a few words but the basic idea, it comes out in each one of them.

Q. This basic form that was in usage, was this your form or was this somebody else's form? A. I don't even know that there is a form. I said the probabilities are. For instance, Mr. Jordan had just finished doing twenty some odd schools or thirty or some number in Columbia, in which the general problems—of course, you will have specific communities that will have variations, but the general things would run consistent in all of them.

Q. These in South Carolina that he had been dealing with, as well as the ones in Mississippi and Louisiana that Mr. Anrig was working on at that time— A. Yes, and I guess others, too. I know Mr. Jordan has got, right now he has got several school systems in Alabama and several in Mississippi that they are working on, and if there [107] is not some similarity between them, it would be amazing to me, I mean once you have worked through a program.

Q. Which ones in Alabama are you working on now, do you know? A. No. It was in the paper, Jefferson County, not Birmingham but—

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Mr. Gorman: The City of Bessemer.

A. Well, it's a county.

Mr. Gorman: It's in Jefferson County.

A. Jefferson County which does not include the City of Birmingham, and then there are a couple of others similar in that same general area. It was in the paper here. I saw it in the paper. I forget what they are.

Q. Dr. Hall, how long were you in Mobile? A. I was here for twenty-eight days.

Q. You came here when?

Mr. Crawford: This is repetitious. He has already said June 10th.

A. Yes, June 10th.

Q. And when did you leave? A. July 3rd, or about July the 4th. I was here all day the 3rd but then I took some things with me to do after I left and so I worked on up through the 7th.

Q. Were you here constantly throughout that time or were you in [108] other places? A. No, I was—well, I ran out to, for one thing. I made a speech in Jacksonville, I think. Yeah, I had to go to Jacksonville. This was a commitment I had made but I took my work along and worked on the plane.

Q. When was this, the 23rd or the 16th? A. The 16th.

Q. What about on the 23rd? A. The 23rd? The 23rd I went over to Edgewater Beach but I was only gone about three hours, four hours.

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Q. Was there any other time that you left Mobile or were you in Mobile constantly other than those two occasions that you have mentioned? A. No, I think I was here constantly, and the fact that I was away those times didn't mean anything because I was working on the stuff. All I had to do was stop long enough to make a speech.

Mr. Philips: Let's take that five minute break that I started a half an hour ago.

Mr. Crawford: Now, don't say anything while we're on the break, Dr. Hall, or he's going to call you back on the record.

(Recess)

Q. Dr. Hall, do you consider as an important criteria in the [109] assignment of students within reasonable bounds filling schools to capacity but not over-filling the schools in order to make sure that all students are housed? A. Yes, that sounds—

Q. It's almost elementary, isn't it? A. Yes. Although a common practice is in most of your larger school systems they have portable classrooms that are just as good, that they can move around.

Q. That's what I had in mind when I said within reasonable bounds, that you are frequently over-filled slightly. A. Right.

Q. You think any desegregation plan then to be practically workable in your figures that you are dealing with in the assignment of students to schools have got to be accurate within bounds, should they not? A. They should be, yes, reasonably so.

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Q. Were your figures accurate that you were working with? A. Reasonably so. There may, I believe I indicated in the report that there was some degree of error in transferring them but within reason I think they were.

Mr. Philips: I have no further questions.

A. Do you have something particular in mind? Do you find some error we made?

[110] Mr. Philips: Well, I am not through evaluating it. I probably will.

A. Well, if you do find one, I think you ought to tell us and then we would probably, we would try to correct it.

Mr. Philips: I probably will find some. I was just interested in a general concept.

A. If you or the members of the school system found some error, I think you would have an obligation to tell us.

Mr. Philips: I am sure we would if we did.

On Cross Examination by Mr. Gorman:

Q. Let me just go over a couple of things here. Now, Doctor, when you were working on this desegregation plan, you had, you did certain work yourself, is that correct? A. Yes.

Q. And you had several staff people doing work along similar lines while you were working, is that correct? A. Right.

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Q. And the staff people included personnel from the University of Alabama? A. The University of Alabama specifically requested that they not be involved in any of the vital parts of the desegregation study so we did not ask them to participate in any way [111] in any of that.

Q. But you did get some— A. But they did do help. In other words, if we would draw a map and said we need another copy of it, then they would make that for us but they had nothing to do with the map-making itself.

Q. Dr. Woodward did some help with respect to— A. He did practically all of the—yes, I would say he did practically all the chapter on finance.

Q. And you also had some assistance from the University Center at Auburn, one or two of the people there? A. One man came down and worked the full time, yes. Well, not the full time. He was here a week or two. I don't know exactly how long he was here.

Q. And you also had assistance from the Atlanta office of the Office of Education? A. Yes.

Q. That is Mr. Jordan's office? A. Yes.

Q. And the University of South Alabama?

Mr. Philips: I think all of this—he has already gone over all of this, Walter. This is totally repetitious.

Q. Now, after contact had been made with the School Board, the [112] School Board or the school officials submitted plans, desegregation plans to you and your staff, is that correct? A. That's correct.

Mr. Philips: You say the School Board submitted them to you?

A. No, the school officials he said, I thought, the representatives of the school system, the staff. They were staff proposals. I don't know whether the Board had seen them or not.

Q. Now, were those proposals both with respect to the rural and the metropolitan schools? A. Yes, at different times.

Q. And what did you do with those proposals? A. Let's see. We had set up a schedule in our conferences that the rural, that we would have a conference for the rural presentation on Wednesday, I don't know what day—let me see now. Let me get my dates straight. Anyhow, the presentation on the rural was made and then the—maybe, I don't know the day of the week. Maybe it was Friday. And then we set up a conference for the presentation of the metropolitan on the following Wednesday, and then we would have a joint conference on Friday of that week in which we would work out all of the details, but the representatives of the school system felt that they shouldn't participate in that, that we ought to develop our own plans separately, so we did not work with [113] them on that.

Q. I see. Then you planned to take the proposals that had been made by the school officials and suggest, study them and suggest any modifications or adjustments that you thought were appropriate? A. Well, our basic plan had been that with our consultant, I mean my basic plan had been, I won't say our, that with our consultants that we would take Friday and work through everything that we had up until that time and make proposals trying to answer the three questions that I indicated previously and

that we would just all sit around and do that together. Now—

Q. When you say "we", you mean— A. I mean the school staff and our staff would work at that, but they indicated they did not wish to participate in that kind of a conference, so then we had to develop conferences or work out our own plans and then bring them back subsequently, and so we had set that up for Friday so then we had to postpone it until the following Tuesday.

Q. All right. In your contact with the school officials have they suggested any specific modifications or adjustments to the proposal that you have submitted to them? A. No, sir. There have been no suggestions for modification of [114] anything that we have—

Mr. Philips: Those will be submitted to the court, Walter, as you well know.

Q. Now, with respect to transporting students as part of a desegregation program, do you feel as an educator or do you believe as an educator that it is educationally sound to use transportation to achieve a desegregated learning situation? A. Could I make a little lengthy statement on that?

Q. Sure. A. We have talked a good bit in education about what we call compensatory education for those who are in need of special help and we have set up, many of us have set up a number of plans. Some of them have been quite costly to do this job of compensatory education. Now, my opinion is, and this is only an opinion, that the most satisfactory compensatory program for our ghetto blacks

would be to be placed in a school with white children, and that money expended to do that would be more rewarding than hiring extra teachers or giving extra materials or what-have-you, and so I would, I guess I would answer your question that, yes, I think it would be a valuable educational experience, particularly for the young negro pupils at this time, to be placed in schools with white pupils.

Q. All right. Even if this would mean transporting them? [115] A. Yes, even if this meant transporting them.

Q. Now, with respect to the attendance lines that were proposed in the plan which was developed by you and your staff, Mr. Philips referred to artificial arrangements of attendance zones and mentioned gerrymandering. A. We call it, we use the term "non-contiguous".

Q. And Mr. Philips I think mentioned gerrymandering zones and gerrymandering has lost its original definition and has a lot of other connotations, and I would just like to go into that a little bit. Now, when you said that you redrew the lines to encourage desegregation or to permit further desegregation, was this done merely as an alteration or an adjustment of the lines keeping still within sound educational principles when the alterations were made, or did you disregard educational principles when you formulated the attendance zone lines to further desegregate? A. What we did we thought would give the best educational program for the young people who were involved. In most cases it was adjustment of lines but there were a few what we call non-contiguous areas that were a group of pupils who would go out to different schools to provide a desegregated situation in those schools.

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Q. Now, with respect to your testimony concerning possible future [116] adjustments that would be necessary or might be necessary in the attendance zone lines, you indicated that there are changes I guess daily in the location of students and from year to year. Now, what data did you have when you were locating students? Was that data based on last year's enrollments and the location of students the last school year? A. We had that data plus a pupil locater maps, but we actually, in the plan which had been presented to us by the school staff for the desegregation of the schools in the metropolitan area, they had the grade levels for each school and the attendance and the anticipated attendance figures. They indicated there was some small error in translating that, but we used that basically and then we used about two or three techniques in trying to determine the actual membership. For example, if they had a school with grades one through six in it and it had six hundred pupils and we were proposing to just take the sixth grade out, we used the rough figure of five hundred pupils that would be in that school. Now, that won't always hold but it's a close enough figure where you won't be off much in your calculations, and then we tried to balance our figures against the figures that we had from the school system.

Q. And these are the types of adjustments that might be necessary [117] after the start of school or once it's known definitely how many students there are in each grade where the grade structure has been changed, is that correct? A. That's right.

Q. Now, with respect to— A. And we would also—in some instances we necessarily in the time we had, we had

to short-circuit. For example, if you had grades ten, eleven and twelve and the pupil locater maps that they had were for, that they had with which they had provided us, were, each map had a separate grade on it, and so we would count one grade off the map and then multiply it by three or whatever number of grades. Rather than count every map, try to count all the pupils that are on every map, and that will, of course, lead to some error but not a significant error.

Q. Now, with respect to the change that was made by you and your staff in the proposals that were submitted by the School Board in the rural schools and particularly the change in the Burroughs School, now you testified, I believe, when asked by Mr. Philips, that the reason for this change was in order to eliminate an all-negro school. Was the change that was, that you proposed also an educationally sound one? A. Yes, it was educationally sound. As a matter of fact, it was [118] more in line with what they, with the general plan, a pattern for the school system, which is a five-three-four basic structure, and this proposed a three grade school at Burroughs which would have fitted right in with their long-range plan.

Q. Now, with respect to the faculty provisions that are in the plan, you mentioned that these were included; however, the wording you felt should be "should" rather than "shall". A. For our report, yes.

Q. Now, is the reason for that, you mentioned—

Mr. Philips: I think you are going to lead him a little too much there, Walter.

Mr. Gorman: This is cross-examination.

Mr. Philips: I realize that but this is not an adverse witness.

Mr. Gorman: It is cross-examination.

Mr. Philips: I realize that. Let him state his reason without suggesting the reason.

Q. Let me finish my question. In answering Mr. Philips' question you said that you did not want to make it an order, that's why you would rather use "should" than "shall". Do you feel or do you believe as an educator that the type of faculty assignments recommended by your report or proposal are educationally sound and should be implemented? A. Yes, and this is a very small thing. I shouldn't have brought [119] it up but to—I think what I meant, we were making a report to somebody and my preference for a way of wording it would be "it is suggested that the Board adopt the following policy" and then read the words, or if you are just going to write the policy, then start it "the Board should adopt the policy" which would say thus and so.

Q. So it wouldn't appear to be a direct order from you and your staff? A. That's right. We are not issuing orders. We are just giving a report. That was kind of a minor thing.

Q. With respect to the proposal as a whole, have you and your staff proposed any attendance zone lines or grade structures or assignments that you believe are not educationally sound? A. Let me say no and then amplify that. If I were organizing a school system, we have two schools set up that I would try to work out some other plan for, and that was a school called Hillsdale and a school—it's an

all eighth grade school and we have another one up in the north—

Q. Clark? A. Clark? Well, anyhow, there were two just plain eight grade schools and I would try as time went on to work away from just a one-grade school. I think you can carry on an effective educational program in the light of other values that are in [120] the report that it would be sound educationally, but in the long-run I think I would work to get out of that one-grade school.

Q. But these are sound under the present circumstances? A. Yes.

Q. Now, you have mentioned some of the criteria that were used in formulating attendance zone lines and you mentioned capacity of schools and location of students. Did you also consider hazards such as highways and rivers and streams? A. To the best of our ability, yes. We recognized that while we had before us constantly while we were working a map which showed where the flow of traffic and the main arteries and where the problems of getting from one place to another existed, and so we did take that into consideration, yes.

Mr. Gorman: I have nothing further at this time.

On Cross Examination by Mr. Crawford:

Q. I have very few questions which could be answered yes or no. Dr. Hall, in your proposed plan did you take into consideration the School Board's prior plans, present plan, information and data received from the School Board as well as from other sources in developing the present proposal? A. Yes.

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[121] Q. Now, why is it so difficult to leave five black schools all black? A. Well, that would have gotten us into the problem of cross-bussing which I said we did not propose, but those facilities had to be used, and in order to make room for white pupils at these facilities, you would have had first to haul the blacks, transport the blacks out somewhere and then transport whites back to these schools, and at this point in our educational philosophy we have not been willing to go to the cross-bussing idea.

Q. Well now, are you aware of the fact that within the last five years the School Board transported black students fifty-two miles passing white schools in order to reach a black school fifty-two miles away? A. Yes, sir, I was aware of that.

Q. Would you consider that a good policy of the School Board and good educational bussing? A. Well, let me make this comment on that, if I may. At the time that program was started, it was required by law and had the support both of law and of the communities—

Q. Which communities? A. Well, the black and the white communities.

Q. And where did you get the information that it had the support [122] of the black community? A. Well, that is—I don't know that it had the support. It didn't have the objections. I am talking about—now I am talking about prior to '54 when the whole thing started.

Q. No, I am speaking of within the last five years. A. Well, within the last five years I assume that it did not have the support of the black community and so I am not, I didn't want to get involved in that. I was trying to trace

your history. Now, at the present time the bussing of pupils in the opposite direction does not have the support of law, even in the Civil Rights Act, and in, I don't know about this particular community but in many communities where I have worked it doesn't have the support of the citizens in the community. I mean either the—

Q. Which citizens are you speaking about? A. I mean either the white or the black. I am talking about this cross-bussing, to bus out and bus back. Now, as I said, I'm not, I don't know about Mobile whether it would have the support of the blacks or whether it would have the support of the blacks or not, and it doesn't have the, the cross-bussing doesn't have the financial support or the legal support or the community support unless something in this case decides that it does have the legal support. That was one [123] of the points I said in my earlier testimony that had not been fully clarified about all this business.

Q. Well then, are you aware of the fact that the court in the June 3rd order ordered you to desegregate all of the facilities and then you omitted five schools? A. I am aware of what that court order said, yes.

Q. And you deliberately failed to desegregate five predominantly or all-black schools? A. We could see no way to do it within what we used, the rule of reason.

Q. So then on all other schools that you have desegregated with a great majority—that is, in terms of racial—you did it with all educational, sound educational reasoning then, is that correct? A. That was the position that we took, yes.

Q. All right. Now, are you taking the position that you and your staff had sufficient time to develop a desegrega-

tion plan—that is, the basic concept of such, that you have had sufficient time to do that? A. Yes, we had sufficient time to develop the concepts. We said it would take more time to work it out.

Q. Now, in doing that, this proposal, would it have been necessary for you to have been in Mobile twenty years to do that? [124] A. No, sir.

Q. Five years? A. No.

Q. So you didn't have to be an old Mobilian and working in the School Board office in order to do the job that you and your staff did, is that right? A. That's right.

Q. Now, did you diligently attempt to follow the Fifth Circuit Court's order of June 3rd in developing the plan? A. Yes, we diligently followed it to the extreme limits of reason.

Q. Now, in Chapter Five you made some suggestions for plan implementations. Did you find in the past that any of the suggestions for plan implementation had been used by the School Board as a matter of policy for the past five years or six or seven years? A. I am not clear on what you are talking about.

Q. Well, when you discussed this with Mr. McPherson or any member of the administrative staff of the School Board, did you learn that as a result of each decree for the past five years or six years that they attempted to fully inform the citizens and the community about the legal requirements of school desegregation and their plans to comply with the legal [125] requirements?

Mr. Philips: I hardly think he is in a position to interpret this.

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Mr. Crawford: Well, I am asking did he discuss it with McPherson.

Mr. Philips: That is not the question you asked.

A. I gained the impression—now, see if this comes anywhere near answering your question. I gained the impression that the school officials, Mr. McPherson and the others with whom I have talked, were not opposed to desegregation, that they, but that they felt that what they were proposing met the requirement of making no distinction in race.

Q. Well, did it? A. Well, according to our interpretation of what the court was saying it did not but they interpreted that it did so I guess that is the point that is up for argument.

Q. I call your attention to page twenty-one of the report and the following pages there where you have listed amongst other things the ratio of white students and black students in certain schools which were predominantly either black or white schools. Would you interpret those statistics as saying that they made no good faith effort in trying to desegregate the Mobile County school system? A. No, sir. It would depend on this business of this definition [126] that he was trying to get me to give. One definition, and I don't want to put words in the School System's mouth, all I can tell you is my impression of the definition they felt was being used, was that boundaries for a school would be drawn and no distinction would be made in the pupils in attendance at that school because of race, and if it happened that all of them turned out to be white or all of them turned out to be black, that was just a happenstance and not deliberately planned to avoid desegregation.

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Q. But that was a fact, though, wasn't it? A. Now, I gather that impression and I certainly don't want, I may be way out of line in trying to get that impression. Now, the thing that we had, though, the impression of the definition was, as we interpreted what the court said, it had to be more aggressive than that and a more positive thing and just drawing lines was not enough but that the schools actually had to be integrated or desegregated, and I guess that is the essential difference in the interpretation. I know I was asked if the school system, if the people in the school system couldn't draw as good a plan as we could or a better plan, and I said they certainly ought to be able to but it all depends on what the definition is, and the definition of desegregation, where you make no distinction because of race, doesn't seem in this [127] case to be sufficient for the court, that it must be, that race must be a factor and that desegregation must result. Now, I guess that is the basic difference in the whole argument.

Q. Well now, your position is now that it is very clear to you and you have interpreted that the orders of the June 3rd order of the Fifth Circuit that says that they must desegregate all facilities, that the plan that you have proposed so follows that order, is that correct? A. It follows our interpretation of that order and does everything that could be done within what we call legitimate responsible reasoning. It still left those five all-black schools and we could not figure out a way to do that without getting into the problem of cross-bussing and we didn't have a legal decision yet on busses.

Q. Well, didn't you say previously that in order to help the black students and in order to achieve full educational

opportunities for both black and white, that the schools should not be all black or all white? A. Yes, sir. I said educationally that is sound, yes.

Q. Then on what criteria or what basis are you leaving five black schools other than the bussing? A. That's right. We didn't have anywhere to put them.

[128] Q. Well then, couldn't you do it by bussing? A. You could do it by cross-bussing.

Q. Is there anything in the court decree that says you cannot bus or cross-bus? A. No, sir.

Q. Well then, you have not really complied with the court's decree then? A. Well, I guess the court will probably tell us if we haven't.

Q. Well, I mean in your opinion, based on your definition or understanding of what the court said, and you left five black schools unsegregated? A. We tried and we could not figure out any way and we spent hours and hours trying to figure it out.

Q. Then the students in those five black schools will forever and continue to suffer from good educational opportunities? A. No. We made this general statement, that any new construction should be, not be in the areas in the black residential areas, but as buildings were replaced, that they ought to be out where they would be mixed. Now, that is a long-range part of it but it—

Q. Well, what about those students in school now that will soon be out of school and in the community, they will then continue to suffer as those in the past for the lack of better educational [129] opportunities then? A. That's right, and the only recommendation, the only part I can say at all to justify that is—

Q. Well, isn't it a fact—

Mr. Gorman: Let him finish his answer.

A. Is that the school system ought to make a strong effort there for other aspects of compensatory education, which I said I didn't think were as effective as the integration.

Q. When you say compensatory, you mean give those pupils some money or what do you mean? A. I mean give them power, give them more teachers, more books, more help of every kind that you can in a situation of this kind, and they would, I think they would be fully justified in spending more money in those schools, and again you run into this problem of treating all people equally but I think I can make a just case in justifying additional expenditure of funds and materials in those five schools.

Q. Dr. Hall, isn't it an educational principle or concept that you educate fully the child, the whole child? A. Yes.

Q. That has been a principle for how long? A. Well—

Q. By educators? [130] A. As long as I have been in education.

Q. And how many students are over there at those five schools? A. I don't know the exact numbers. I would guess about four or five thousand but I don't know the exact numbers.

Q. So those four or five thousand black students will go lacking of development of the full child while waiting on the School Board to make up its mind about building another school, is that right? A. Well, that's—the only plan we had for that was compensatory education of a different type and it would not involve the integration situation.

Q. Now, have you discussed with Mr. McPherson or any member of the School Board, member of the Board or ad-

ministrative staff, about the implementation of your suggestions which is found in the back of that proposal? A. No, other than to give them a copy of the report and to indicate the time schedule.

Q. And are you aware of the fact that as a result of news releases that just the opposite is taking place? A. I am—to this morning. I read this morning's paper but I haven't seen any other papers about this thing. I don't know what is happening.

Q. Then based upon what you read in this morning's paper about [131] the School Board's policies and issues and statements made, have you read enough to form an opinion that the School Board does not have or does not intend to follow any good faith orders or implementation of school segregation or desegregation? A. The things I read in the paper, there was an editorial and some comments by a Congressman. I didn't see anything about, I haven't read anything about the School Board itself. I had the feeling in both the Congressman's statement and the editorial that the Congressman seemed to be talking about the Civil Rights Act and not to distinguish between that and the court. He was talking about civil rights and the H.E.W. and all that sort of business, and this is something different and I thought the paper in its editorial should have picked up the difference, but this suit is not based on, as I understand it, based on the Civil Rights Act but it is based on the Constitution and court principles.

Q. Have you found anything in the School Board's file or a discussion verbally what Mr. McPherson or Superintendent Burns or any member of the School Board that reflects that they have been responsible to the community

in the implementation of any of the School Board's plans within the last five years?

Mr. Philips: I am going to object to that because the question [132] implies that he has examined the School Board's file and there is no testimony that he has examined any such file. You refer to a file. There is no implication in the question as to what file and no implication that it implies that he examines files. I think he has testified that he hasn't. It implies that he has talked with School Board members and I think he testified that he hasn't, and it implies that he has talked with Dr. Burns and he has not testified that he has. I don't know whether he has or not.

Mr. Crawford: Well, I am asking him.

A. I have talked with Dr. Burns and I have talked with Mr. McPherson and both of them made similar statements to me, that they were not opposed to desegregation or integration, that they were moving ahead in a way that they seemed to be quite proud of, and that they were not objecting, that they had followed, they were saying they had followed the court orders they had received to the letter. They did express some little feeling that the court orders coming at times when they did had caused quite an additional expenditure of funds, that if the court orders had come earlier or later, that they would not have had that, that they could have handled them without the additional expense involved.

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Q. Now, back to the five schools that are left all black, when [133] in your opinion can the School Board effectively bring about desegregation of those schools in terms of months or years? A. I don't, I am not in a position to give a time statement on it. We did suggest that no buildings be replaced. Now, what the, just for a period of time, just the economics of the thing, of building additional schools, unless there are funds forthcoming from a source that is not now available, it would be a considerable period of time, and that is the reason I suggested that they go all out with a compensatory educational program in those schools.

Q. Well now, do you stand to be— A. I would—

Q. Excuse me. You would what? A. I would stamp them in accordance, the schools in accordance with the proposals made for faculty desegregation and I would put additional staff in those schools through my Elementary-Secondary Education Act funds and through other programs, and then I would try to scrape up some additional funds from somewhere to make those schools show places and not only, I mean I don't mean that in terms of a place to show but I mean a place where real education is going on. I mean it is possible, you see, in an all-black situation to produce with compensatory education, and I have had some experience on [134] this because I have tried it—if you put the power in there to get at least the aspect of the school program with which so many people are concerned, that is your subject matter content in those programs. I tried to put them in an all-black elementary school. I put just a lot of extra power in there, more than you could ever afford to do on a mass basis, but in a mathematics

program with fifth grade students in an all-black school, and they did become the best mathematics pupils in the county and they retained that right on through school but it took one heck of a lot of—well, I'll not say money. Actually it wasn't money. It was materials and additional teachers to do it, but that compensatory thing will work in that respect.

Q. Well, is it your experience that if the black students in similar situations as the five schools we have discussed are given an opportunity, that they could within a short period of time or within a reasonable period of time achieve the level of the white students in the other schools which were formerly all-white schools? A. Yes. I guess I would say yes.

Q. Well, what you are saying then, is it correct in saying that basically those black students are not necessarily retarded or slow learners—that is, because of the conditions or the [135] facilities upon which they had to attend school that make them, that would be as stated previously by you, I believe, a little behind the white students? A. Yes. I think there are a whole series of factors including your home life, your educational level of your pupils, and the aspirations in the community that have been brought over a period of years and the opportunities that were open, a whole variety of things that are factors in that, but I don't believe it's any, that the average under-achievement, of which everyone is aware, of the negro pupils is an inherent characteristic. I think they have the ability and all kinds of things need to be done to pull it out.

Q. Now, to the administrative staff, in your report you listed at the personnel office at administration that you

found as of December 17th, 1966, they had seventy-seven white persons in the administrative staff and thirteen negro persons in the administrative staff. Do you feel on the basis of those figures alone that it is shown a lack of concern about the black schools? A. No, sir, not on the basis of that. I have felt that school systems or school officials have problems, that in dealing with both the white communities and the black communities, and that the black community is apt to look with skepticism [136] even though everything may be all right, but unless there are some black people present, and I know of nothing in any laws or decrees or anything that have been said that you have to employ black people, but as purely a public relations matter I think school systems would be wise to have, to seek out and find some black people for their top staff just from the public relations angle even though they may not do any different from what had been previously done.

Q. Well, based upon the figures quoted as found on tables two-eight as it relates to the administration, do you feel that or is it your opinion, professional opinion, that if the School Board had wanted to deal more fairly with the predominantly black schools in light of the black supervisors would have more knowledge of what is required in black schools or what is lacking in black schools, that it should have had black supervisors and other black persons on the administrative staff to deal more effectively with the predominantly black schools or all-black schools? A. Well, you get into that definition again of making no distinction because of race, and so I ran into this problem in my own school system, that they said make no distinction because of race. Then you would start looking for people to fill

various positions, and most of the employment agencies around [137] the country and most of the people where you would get recommendations from if you sent outside the school system would send you white people. I mean, you know, so—

Q. All right. Now—

Mr. Philips: Let him finish his answer.

A. Let me just finish that.

Mr. Crawford: But that is irrelevant and immaterial to the question.

Mr. Philips: You asked Dr. Hall the question and he is responding to the question. Let him finish his answer.

A. I think it will be before I get through, so I think there's a period of time when the school systems would be wise to say fill positions with qualified people and with a certain number of them, fill them with black people, and then after you have gone beyond that time, I don't know what the time is, say four or five years, but, all right, you've gone beyond that time, then you can become color blind in your selection of employees, but just as a matter of course, suppose one of those positions came open right now, the chances are that no black people would apply to fill it and the chances are also that if they sent applications all over the United States, that they would come back and the great majority of anybody who responded to it, was interested in the position, would [138] be, they would be white people

so they have a very difficult time, recognize that, of getting them and I have advised boards, not as a matter of law but as a matter of public relations, that they ought deliberately to set a policy that would enable them to seek highly qualified, capable negro people for some of these top positions, but if you start out and say we're color blind and we're going to take them, well, then you come back with the same color you've got.

Q. Well then, how can you distinguish that statement in light of the fact that you have as on table three, seventy-seven white and thirteen negroes and when you have almost one-third or better negro school pupils? A. Well, I would say that—now, I don't have any basis for a judgment. I would just say, though, that—well, I have no basis for saying anything about Mobile one way or the other on that particular point.

Q. Well, I mean if you just looked at the statistics alone. A. But just as a matter of general principle, you could say —I'll put it that why—that if they sought the most qualified people and were color blind, then these were the people that they came up with, but you could also say that they had discriminated against blacks. Now, just—you could make either kind of judgment from it, but I was saying that from the ex- [139] perience that I have had, if you go seeking—you see, if you use this definition that you will be color blind in your selection, then with the structure that you have, the chances are that you will come up with a white person. You will have a lot more to choose from, and as a guideline I think Boards would be wise, I don't know of any laws that require it, but they would be wise to set a

certain percentage of blacks and fill the positions with well qualified black people.

Q. Then you are suggesting that the Board do that? A. Well, I don't know anything about that point, but if they asked me, I would suggest it but they probably won't ask me. I have told other Boards that, yes. I have told other Boards, I have written a stronger statement than that. I have told other Boards in some of the reports that I have written that the number of, that the personnel in the positions of principals and positions of, top staff positions should approximate about the same ratio as the pupil population in the schools.

Q. Did you so recommend that to the Mobile County Public School System? A. Well, that isn't in this report here.

Q. I know that but I am saying would you so recommend that?

Mr. Philips: I think the report reflects his recommendations.

A. Well, if somebody asked me to, I would, yes, but I don't think [140] it's—I'll be frank with you, I don't think it's required by law.

Q. Well, I didn't say that. I asked you would you recommend that? A. Yes. I recommended it to my own Board. Now, I couldn't get them to approve it but I recommended it anyway.

Q. Well then, can you account for the difference in the specialized courses that are offered at all-white schools and are not offered at—at all predominantly white schools, white schools where you have two negroes in a student body

of three hundred, and the lack of such in the predominantly or all-black schools, where these specialized courses are offered in one as opposed to the other consistently? A. Yes, I can account for that in a number of ways.

Q. How can you account for that? A. The basic or required courses, as I understood it—

Q. I said specialized courses. A. I know, I am going to get to that. Are required of all schools. Now, the specialized courses are up to the individual school. For example, if the principal and the faculty and the students want a course in say creative writing, they can have it.

Q. Well, Doctor, are you speaking of what is done in Mobile County or what is done generally from your experience? [141] A. No, I am talking about in Mobile County.

Q. I see. A. And so—at least this is my understanding now, but if the—

Q. Is that documented or is this just what was told you?

Mr. Philips: Wait a minute. Let him finish his statement.

A. Yeah, it's in that section on the course of study, I think, the policies under which they operate, so that the initiative for the additional specialized courses comes from the school as they want these special courses, so either those all-black schools did not feel the need for these courses and did not have enough pupils who were interested or they did not pursue the, aggressively pursue it, but there would be no, there is no County controlling policy that would prevent them from having it. They could have the course—they could have the course if they wanted it. We suggested in

there that the County probably ought to take a little more aggressive action to see that they did give consideration to some of these specialized courses in these schools because it may be that the leadership that they now have is not pushing it hard enough.

Mr. Crawford: I believe that is about all.

A. But, you see, in most school systems, if you have got a qualified teacher and you've got thirty kids, you can offer any course you want to, but if you've only got five kids that [142] want a course, you can't afford to offer it because that, you've got to have that teacher load going along there and that teacher has got to handle a hundred and fifty or a hundred and sixty pupils a day. Now, if some teacher wants to teach an extra period or something and handle a group of five or six, but there has to be the interest in the course. Now, some schools and some teachers, some department heads, are responsible for stimulating interest in these courses and these specialized courses, and so you could attribute it then to a more aggressive action on the part of the teachers and the principal and the school in the specialized courses, and I'm not even saying it's better for them to take creative writing than it is straight old English or some other course, but that is the way the specialized courses get in.

Q. Then are you saying that in Mobile County public schools the principals and faculty of just the high schools of Williamson, Dunbar, Central, Blount, and Mobile County Training School, did not request these specialized courses is why they didn't get them as it is opposed to Vigor,

Murphy and Davidson? A. I could not answer that question specifically. I could say from what I understand the way the policy operates they could have had the courses if they wanted them and had enough students to have them, and maybe they don't want them. Maybe [143] they made a judgment on them and sometimes some of these schools will come up with some of these specialized courses and they aren't worth a hoot.

Mr. Crawford: Now, I am speaking principally and my question relates to the proposals in tables four-two, four-two-a, four-two-b on through four-two-g, which I would like to—

A. Well, what I am saying, my understanding—

Mr. Crawford: Let me finish, please.

A. Yes, I'm sorry.

Mr. Crawford: Which I would like to introduce into the records in support of your answers to my questions.

Mr. Philips: The report is already in the court, Mr. Crawford, the full report.

Mr. Crawford: Well, rather then encumber this record, then give specific reference to those tables, and the court reporter will so note that, and also the one on pupil administrative staff, I think I made reference to that. I have no further questions.

Deposition of Dr. Joe Hall on July 15, 1969

Redirect Examination by Mr. Philips:

Q. Dr. Hall, with reference to compensatory education, just to clear up something in my own mind, you said for those who are in need of help or for those who need this compensatory [144] education, the most satisfactory way to your mind to do it is to place negro students in schools with white students, and you said in this instance with the number of students you found the best way to do that was by bussing of the negro students, taking them from the area where they lived to get them to this white school was the best way to accomplish this compensatory education. I mean is that an accurate statement of what you said? A. Yes, that is an accurate statement, but when we went into the other five, there wasn't any room.

Q. All right. Now, let me ask you this: How do you determine what school, what student is in need of compensatory education? How did you determine it in this instance? Did you review the record of each student and say we'll bus this one and not bus that one, this one needs compensatory education and we'll bus him but the other one doesn't so we won't bus him? A. No, sir. We just took it by areas.

Q. You just made the broad assumption then that everybody, every student in this area needed compensatory education? A. Yes.

Q. Whether he was an F student or an A-plus student or whatever? A. Well, I—

[145] Q. In this context? A. In the, as we are talking about this thing, you see, these other five schools, I think we, I agreed with the question there that they were going to be deprived and I saw no way of resolving it, but because you can't help everybody, there is no reason why you shouldn't help somebody.

Deposition of Dr. Joe Hall on July 15, 1969

Q. No, I am talking about these in the schools where you have given them the compensatory education, these that you are bussing out, that you recommend the closing of the school and bussing out. You just arbitrarily assumed that every student in that school is in need of compensatory education? A. Well, I wasn't quite, I think I made a more fundamental statement than that earlier, that in the total, the development of the total child, reference was made here, in our society today, I thought it was better both for white and the black pupils to have experiences in school of being associated with each other. Now, this is not necessarily, that doesn't necessarily involve compensatory in the usual sense of the word. You think of compensatory, if a person is two years behind in reading, to help him catch up, but this would, being put in that situation would help him catch up.

Q. Well, what do you mean "compensatory"? Do you mean compensatory and then you mean simply— [146] A. By compensatory I mean a lower reading level, a lower arithmetic level or what-have-you, that's right.

Q. Well then, every one of these students that you recommend the bussing for, you have assumed or taken the premise that they need this compensatory education? A. I would assume that all of the students needed it and these are the only ones that we can handle.

Q. Okay. You referred to a situation in your own school system where you had taken a group of students and concentrated them, put the power to them, I believe you phrased it. You could do this with most any group of students, couldn't you? A. Yes, I think so.

Q. If you had the facilities and the funds and simply concentrated the effort on making a super-student, you could

do this with any student within reasonable bounds? A. Yes, I think you could.

Q. You mentioned adjustments being necessary in the lines of the attendance areas as they have been submitted to the court. Do you have in mind the possibility of adjustments being necessary in connection with the operations of the school system this coming year or did you have reference to adjustments the year after? A. For this coming year I would say no particular necessity for [147] adjustments in boundary lines.

Q. You think they are adequate and satisfactory just as they are? A. That would be my opinion, but if in exploring it they found out it was off somewhere, then everybody would be foolish not to change it, as long as you haven't got—all factors being equal. In other words, if we made an error and have got two hundred too many pupils in one school and two hundred too few in another, and you could move the boundary line over, well, it would be foolish not to do it, and I want to say that we are not above making errors. Good gracious.

Q. Were these attendance area lines, just as a basic principle, drawn on a non-racial basis or on a racial basis? A. Well, it depends on what your definition is. They were drawn to get desegregation so I would say you would have to say the element of race was in there.

Q. They were drawn on a racial basis as opposed to a non-racial basis? A. Yes, depending on what your definition is all along the line.

Q. All right. Now, did you or anybody working under your direction make any effort to trace out the locations of these lines where you had drawn out, trace out—I mean by

going out and observing them physically, where the lines you put on the map would lie in reality? [148] A. In some of them we did. In most of them we tried to follow as closely as we could lines which the school system is already using.

Q. Which ones did you trace out, do you have any— A. Oh, I wouldn't remember. Take the Murphy-Williamson, the line between Murphy and Williamson that we drew. We drew it, I think, on the same line that they are now using for ninth graders.

Q. Well, I am not talking about those in which you used the same line position but I am talking about whether or not you actually went out and traced out in the street, went out and followed where your lines would lie? A. No. No, we used the maps for that and then—we drove around a lot but not specifically to trace out a line.

Q. So as far as you know then, some of these lines you have may go through the middle of shopping centers and things of this nature. You have no way of knowing whether they do or do not? A. Well, they might—no, I have no way of knowing whether they do or not except we generally followed a pattern that had been previously developed by the School Board.

Q. But when you deviated from that, then you were out in an area where you had no knowledge of just where that line would lie, is that correct? [149] A. That's correct.

Q. With relationship to shopping centers, commercial areas, heavy traffic arteries or natural barriers or hazards? A. Well, we tried to avoid all natural barriers, at least as far as we could find them on our maps.

Q. Those which you observed on the maps? A. Yes.

Deposition of Dr. Joe Hall on July 15, 1969

Q. Were your lines drawn with any regard to the existence of commercial transportation lines, bus lines? I am not talking about what might exist but— A. No, other than —well, the junior and senior highs basically followed the same pattern that you now have, you see, that you already have. Now, the elementary schools where we varied them, we did not.

Q. Do you have any knowledge of the bus routes, commercial city bus lines in Mobile? A. No, sir.

Q. Did you make any inquiry into that? A. No, sir.

Q. Do you have any knowledge of the flow of traffic insofar as residential to commercial? A. Yes.

Q. Where did you acquire that information? [150] A. We acquired it from studying the maps and just talking with different people around here and going around and looking where the—

Q. Who did you talk with? A. Well, we talked with some of the people from the University of South Alabama and asked them where the, how the traffic flowed and the way you could get from here to there, and where we had a real question about it, where it deviated from the plan that they were now using, we would check that.

Q. How many did you check? A. Oh, I don't know. I couldn't answer that.

Q. Was it a hundred? A. No, I am sure it wasn't a hundred.

Q. Ten? A. Maybe about ten. That would be nearer than a hundred.

Mr. Philips: I have no further questions.

Deposition of Dr. Joe Hall on July 15, 1969

Recross Examination by Mr. Gorman:

Q. I just have one area briefly here. Now, your testimony with respect to compensatory education and with respect to drawing the lines and the educational considerations in drawing them and obtaining an integrated education is a little bit confused in my mind. Is it accurate to say that as an edu- [151] cator you believe that a higher quality of education or educational opportunity can be obtained where an integrated educational set up or situation is involved rather than all one race? A. Yes.

Q. Now, so in drawing the lines then you had two considerations. You had the consideration of placing as many children in the optimum educational environment to study, is that correct? A. Right.

Q. And in addition to that and as a separate thing in my mind—and now tell me if this is what you as an educator believe—this will create a situation where those who are in need of a compensatory educational situation will obtain it, say by placing students who were previously in all-black schools who are behind the white students in an integrated education, is that correct, so that you have a compensatory factor in addition to just placing children in an optimum educational environment? A. Yes. Could I illustrate what I am talking about?

Q. Well, let me pursue this just a little further. A. All right.

Q. I just wanted to get the distinction clear that in drawing these lines you did not assume that every black student in [152] a previously black school needed a compensatory situation? A. No, I didn't say that, I don't think.

Deposition of Dr. Joe Hall on July 15, 1969

Q. But that if any of those who were now placed in white schools or integrated schools were behind, it would have a compensatory factor as well? A. Yes.

Mr. Gorman: Okay. Thank you. That's all. Now, if you want to comment further on that, go ahead.

A. Well, I don't know as it's necessary. I was going to talk about expense.

Mr. Crawford: Let's go ahead.
Mr. Philips: All right. That will be all.

Deposition of Jesse J. Jordan on July 16, 1969

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No. 3003-63

BIRDIE MAE DAVIS, *et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA, by Ramsey Clark, Attorney General, etc.,

Plaintiff-Intervenor,

—v.—

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al.*,

Defendants,

and

J. TWILA FRAZIER, *et al.*,

Defendants-Intervenors.

APPEARANCES:

For Plaintiffs—

CRAWFORD & FIELDS

By: VERNON Z. CRAWFORD, Esq.

Deposition of Jesse J. Jordan on July 16, 1969

For Plaintiff-Intervenor—
WALTER GORMAN, Esq.

For Defendants—
PILLANS, REAMS, TAPPAN, WOOD & ROBERTS

By: ABRAM L. PHILIPS, JR., Esq.

ALSO PRESENT:

JAMES A. MCPHERSON, Associate Superintendent, Mobile County Public School System

BOBBY R. CLARDY, Board of School Commissioners of Mobile County

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[4] JESSE J. JORDAN, having been first duly and legally sworn, testified on his oath as follows:

On Direct Examination by Mr. Philips:

Q. State your full name, if you will, please? A. Jesse Joseph Jordan.

Q. And your address? A. My home address?

Q. Yes. A. 782 Pinehill Drive, Smyrna, Georgia.

Q. And your office address? A. Number 50 Seventh Street Northeast, Atlanta, Georgia.

Q. How old are you, Mr. Jordan? A. Forty-six in July.

Q. Are you married? A. Yes.

Q. Do you have children? A. One.

Q. How old is the child? A. Twenty-two.

Q. What is your employment, Mr. Jordan? What do you do? A. I am employed with the Department of Health.

Education and Welfare in the Office of Education in the Bureau of Elementary and Secondary in the Office of Title IV.

[5] Q. And what is the Office of Title IV? A. Title IV is the Technical Assistance Program funded under the Civil Rights Act of 1964.

Q. What does your primary work consist of? A. Lending assistance to school systems on problems incident to desegregation. It takes two forms. One is in the form of in-service training programs, institute programs. The other is in the form of developing, assisting school systems in developing desegregation plans.

Q. Mr. Jordan, have you talked with anybody prior to coming here today about the subject of this deposition? A. I have talked with Mr. Gorman.

Q. Who is Mr. Gorman? A. Mr. Gorman is the attorney for the Defense Department, the Justice Department, I beg your pardon.

Q. Is he regularly attached to your office as an attorney? A. No, sir.

Q. Does the Department of Health, Education and Welfare have its own attorneys? A. Yes, sir.

Q. Now, Mr. Jordan, your subpoena required you to be here at ten o'clock yesterday. A. Yes, sir.

[6] Q. And you were not here at that time. On whose direction did you not appear at that time? A. Mr. Gorman called me and asked me about whether I was going to be here or not. I was in town. I had responsibilities involving court cases in Mississippi that I needed to attend yesterday, and I asked him if it would be all right, if he could get it changed until today for my personal convenience in working with these other cases. He said that he did.

Deposition of Jesse J. Jordan on July 16, 1969

Q. Did you contact anybody else about that other than the attorney for the United States Department of Justice? A. No, sir.

Q. When did you first discuss the subject of this deposition with Mr. Gorman? A. Yesterday by telephone about changing it until today and then last night.

Q. Have you discussed the deposition with the attorneys for any of the other parties? A. No, sir.

Q. Give us your background, if you will, Mr. Jordan, from an educational standpoint and a professional standpoint? A. I have a bachelor degree with a major in math and a minor in science and education from Auburn University with a master's degree in school administration from Auburn University. I [7] have been a teacher, principal, director of school transportation, director of Federal programs, director of maintenance and operation, and assistant superintendent.

Q. Have you ever been the superintendent of a school system? A. No, sir.

Q. Where were you assistant superintendent? A. Cobb County, Georgia.

Q. Cobb County. What is the major city in Cobb County? A. Marietta. However, this is not—Marietta is a city system within Cobb County.

Q. How large a system is Cobb County? A. Approximately forty thousand students.

Q. How long were you assistant superintendent? A. Assistant superintendent, I went with Mr. Paul Sprayberry who was superintendent in 1955 and I remained in the central office and I was there in various categories until 1967.

Q. Prior to that time what position did you have? A. I was a principal in the same school system.

Deposition of Jesse J. Jordan on July 16, 1969

Q. High school principal or elementary school principal? A. Elementary school principal.

Q. And prior to that time? A. Prior to that time I was a teacher.

Q. In the same system? [8] A. No. I was in the Marietta city system which is in the same county but a separate school system.

Q. Okay. And since leaving the assistant superintendent's position, what has been your professional background? A. When I left Cobb County in 1967, the first thing I spent three months writing a Title IV, I beg your pardon, a Title III project covering twenty-three school systems. I contracted with the twenty-three school systems to write a Title III project covering all twenty-three. I spent three months doing that. At the completion of that time I went to work with the Office of Education. I went with the Office of Education in the SAFA program. That's federal funds for impacted areas. I was with SAFA for six months at the end of which time I transferred to the position I am in now.

Q. The Title III program, what is that? A. Title III is under public law 8910, the Elementary-Secondary Act. Title III is for integrated programs in education.

Q. What school systems were you writing the Title III program for? A. For the Seventh District of Georgia. It is the twenty-three school systems comprising the Seventh District of Georgia. That is the northwest corner of Georgia.

Q. Okay. Now, what is your position presently? [9] A. I am the, what is called the Senior Program Officer in the Title IV office of Atlanta, in the Atlanta division. That is region four, Federal region four.

Deposition of Jesse J. Jordan on July 16, 1969

Q. When was your first contact with the Mobile, Alabama, Public School System? A. I can't recall the exact date.

Q. All right. Let me rephrase that. When was your first contact with the Mobile County Public School System with reference to an order of the Fifth Circuit Court of Appeals requiring the intervention of the Department of Health, Education and Welfare into the school system? A. I received a call from Dr. Anrig in Washington, who is my immediate superior, saying that the court order had been issued. We were very short of staff help because of the heavy work load. I contacted Dr. Joe Hall from the University of Miami to act as a consultant for us to direct the Mobile study. Dr. Hall came to Mobile and made the original contacts. I believe, I am not positive but I think that was somewhere around July 10th, I mean June 10th. Then a week later I joined Dr. Hall here.

Q. That was on June 17th? A. Approximately.

Q. Approximately? [10] A. I don't recall the exact date, and my first actual contact with the school officials was the next day in which I believe I met with Dr. Hall, Mr. McPherson and others.

Q. Prior to your call from Dr. Anrig in Washington, who you say is your immediate superior, what preparation had been made for dealing with the Mobile system? A. Prior to that call?

Q. Yes. A. I hadn't made any preparation. I didn't know about it prior to that call.

Q. Had you had any information at all concerning the Mobile school system prior to that? A. No, sir.

Q. What did Dr. Anrig instruct you to do? A. He in-

structed me to assign someone to make contact with the school system and start the work.

Q. What work? A. The work following the court order, the directions given in the court order.

Q. What were his exact words as near as you can remember? A. This has been a long time ago and we talk over the telephone nearly every day. He told me that there had been, as I recall, that there had been a court order issued requesting us and [11] the school system to develop a plan which would be submitted to the court and that we should follow through with the court order.

Q. Who interpreted the court order? A. Who interpreted the court order?

Q. Yes. You were to follow through on it. Who interpreted it? A. Well, we obtained a copy of the court order and read it and followed it to the best of our ability.

Q. Who was "we"? A. Dr. Hall and myself and the other consultants that we used.

Q. Who were they? A. Dr. Larry Weincoff from the University of South Carolina, and Dr. Michael Stolee from the University of Miami, and Dr. Woodward from the University of Alabama.

Q. These people were the ones called upon to interpret the decree? A. No. They were called on to assist in developing the plan.

Q. Who interpreted the decree? A. I don't know that anyone interpreted it in that sense. Dr. Hall and I read it and simply followed it to the best of our ability. No one interpreted it to us. We didn't go to an attorney or anything and ask anybody to interpret it to us. We are not lawyers and we didn't work with lawyers.

Deposition of Jesse J. Jordan on July 16, 1969

Q. Someone had to interpret it to determine what it required. [12] This is what I had in mind. Who did that? A. Dr. Hall and myself did this.

Q. Okay. And on what basis did you interpret the decree? A. Well, as we understood the court order, we were to develop a plan of desegregation to present to the School Board for their study and suggested changes which would I believe the court order said affirmatively desegregate the schools.

Q. And what did you interpret that to mean? A. We interpreted that to mean that our plan should result in maximum desegregation consistent with educational principles.

Q. What was the—in your interpretation of the decree and your development of a procedure to follow the decree, what was your primary concern? A. Our primary concern was to achieve maximum desegregation consistent with administrative principles.

Q. And do you feel that the plan that has been developed and submitted to the court does that? A. Yes, sir. It is one plan that will do that, we think.

Q. Do you think it is totally consistent with good administrative procedure? A. Yes, sir, we think it is. In the viewpoint of the consultants we used, that we discussed it with, they thought it was.

Q. Do you think it is? [13] A. Yes, sir, I do.

Q. Do you think it is totally consistent with good educational principles? A. Yes, sir.

Q. Totally consistent with all good educational factors? A. Yes, sir.

Deposition of Jesse J. Jordan on July 16, 1969

Q. It is not inconsistent in any way to good administrative procedure? A. Well, not to my knowledge, no.

Q. And not inconsistent in any way with good educational practice? A. No, sir, not that I know of.

Q. Who had the final authority, Dr. Jordan? Excuse me— A. Mr. Jordan.

Q. I'm sorry. If I lapse over and call you Dr. Jordan, please forgive me. I am not trying to be— A. It doesn't make me mad. It flatters me, but I don't want to be called something I'm not.

Q. I am not trying to be facetious with you and I am not trying to put you on. It's just that I have— A. Most of the people that work in this program are doctors.

Q. And I mean no disrespect by it. Who had the final authority with reference to the interpretation of the plan, I mean the interpretation of the court order in the development of the [14] plan? A. Before we submit any plan to a school system, we clear it personally with Dr. Anrig.

Q. Who had the final authority below Dr. Anrig? A. I assume that would be myself. I don't submit a plan until he gives his approval on it.

Q. And it's you who determines what, who ultimately determines what will be submitted to him? A. Yes, sir. I submit it to him. He studies it, suggests, makes suggested changes on it, sometimes changes it, and then we make those changes and submit it.

Q. Okay. All right. Now, other than Dr. Anrig and Dr. Stolee and Dr. Weincoff, you mentioned Dr. Hall and yourself. Who else worked on the development of the plan that you developed for the Mobile school system? A. On the plan itself?

Deposition of Jesse J. Jordan on July 16, 1969

Q. Yes, sir. A. That's all.

Q. Was there anyone else you conferred with about the plan? A. Dr. Woodward did the financial study as part of the plan. Much of the demographic study was provided by the University of South Alabama.

Q. By demographic, if you will define that a little closer? [15] A. I believe that is Chapter One of the plan.

Q. That concerns the general background of the Mobile area? A. Statistics about the Mobile area, yes, sir.

Q. Did you give them any specific directions as to what they would develop in the demographic study? A. No, sir. I merely asked them to develop the demographic background for us.

Q. Do you have any knowledge of their source material? A. No, sir.

Q. Now, who developed the actual desegregation portion of the study, the actual arrangement of attendance areas and this aspect of it? A. You mean the actual zones?

Q. Yes. A. Well, I don't think any one person developed all of them. All of us were working in one room together. We had maps on the wall, the pupil locater maps on the wall. We took the zones that were given to us by the school system and everybody would suggest a change and discuss it and make other changes. I know that any one person of the group—it was a joint effort.

Q. Of who? A. Of Dr. Hall, Dr. Stolee, Dr. Weincoff and myself.

[16] Q. Who suggested the location of students by transporting them by bus in this system? A. You mean who made the original suggestion?

Deposition of Jesse J. Jordan on July 16, 1969

Q. Yes. A. I don't recall. It just evolved in the discussion. I don't recall who brought it up first.

Q. Was it your interpretation that this was permissible under the decree or required under the decree? A. No, sir, I didn't know. My personal opinion was that the decree asked that each school be fully or effectively or affirmatively desegregated. To get those particular children in a better atmosphere and also to desegregate those schools, it appeared to us that transportation was the only way. I don't know whether this is legal or not. We suggested it and then put language into it to say that we didn't know. We were not attorneys. We didn't have the advice of attorneys. It was not available to us, and so we suggested that if it were legal, this was one way to do it, and if it were not legal, it would require other ways.

Q. Does the Department of Health, Education and Welfare have attorneys available to it? A. The Department has attorneys, yes, sir, but we do not have attorneys available to consult on this. My interpretation [17] of court orders has been with quite a number of them now, has been that the court order appears to me, and I am not a lawyer, but it appears to me that it tells us to work with the school system and it doesn't tell us to work with anybody else, and so I have not contacted attorneys in H.E.W. or plaintiff's attorneys or lawyers, period.

Q. Or attorneys for the school system? A. Well now, I have talked with attorneys for the school system in various cases because they would be with the school people and I interpreted that as being a part of the school, but other than talking with the attorneys of the various school boards, I haven't talked with them, with other attorneys.

Deposition of Jesse J. Jordan on July 16, 1969

Q. All right. Did you talk with attorneys for the Mobile School Board? A. No, sir. My only contact was with Mr. McPherson, Dr. Burns and other members of the staff. I believe you did attend one meeting we had with Judge Martin.

Q. Judge Thomas. A. I'm sorry. I'm thinking about another court. Judge Thomas, that's correct. I have to be in Judge Martin's court tomorrow.

Q. Mr. Jordan, I want to get your personal opinion on some things as an educator or whatever you are. I would like to have your [18] personal professional opinion on several things. What is your personal professional opinion on the bussing of students in order to achieve a racial balance in the school system? A. In order to achieve racial balance?

Q. Yes. A. I don't think you should bus to achieve, merely to achieve racial balance. I think the school systems have bussed over the years to achieve better education and I think that the best compensatory education you can have, for instance, is bussing disadvantaged children into a more advantaged neighborhood for education. Dr. Morrill Weinberg, who has done some research on this, indicates that the children do far better when they are put in another environment.

Q. What is compensatory education? A. Well, compensatory education to me and to various educators would have various definitions of it, but to me it's education to bring students up to a higher level than presently exists.

Q. I see. And is that the definition of compensatory education as you spoke of compensatory education in your previous answer? A. In this sense, yes.

Deposition of Jesse J. Jordan on July 16, 1969

Q. In your previous answer you referred to compensatory education. A. Yes.

Q. And this is the definition of compensatory education as you [19] were using it in that answer? A. In that sense, yes, sir.

Q. Okay. How do you determine, in the Mobile plan how did you determine, Dr. Jordan, that all of these students were in need of compensatory education? A. Well, I don't know that they are in need of compensatory education. Our thinking was that they would probably achieve better in a different setting.

Q. But you had no knowledge of their achievements? A. No, sir. I did not study testing results or anything of this nature.

Q. You were just assuming that they needed compensatory education— A. I was basing that on the—

Q. And you were going to give it to them whether they needed it or not?

Mr. Gorman: Now, that is not what he testified to at all, Mr. Philips. I wish you would refrain from characterizing his testimony.

Q. What is your opinion, Mr. Jordan— A. I was going—

Q. Let me finish the question. What is your opinion as a professional educator of allowing students to attend school on the basis of their choice of school, free choice of school? [20] A. Free choice?

Q. Yes. A. Well, for many, many years, for more years before anyone ever discussed free choice, students were

assigned by attendance areas and depending on the grade structure of the school. If free choice resulted in the right, in effective desegregation and good education, free choice is probably workable. I know personally of no instance where presently freedom of choice is working.

Q. Working in what respect? A. In the respect that the legal requirements for desegregation are being met.

Q. Do you know any instance where free choice has failed to work under any educational criteria, where it has failed in giving other than maximum integration of school systems? A. Well, I believe that a desegregated education is far superior to a segregated education, and any system that results in all-white or all-black schools to my way of thinking would be inferior education to desegregated education.

Q. Mr. Jordan, you refer to totally desegregating the school system. What is a totally desegregated school system? Mr. Crawford is interested particularly. A. Well, to me personally, and this is to me personally, a deseg-
[21] regated school system is one in which it has lost its racial identifiability. That is where the general public does not identify it as an all-white or an all-black school.

Q. Now, I am talking about a school system. A. Well, when every school loses its recial identifiability, that would be a desegregated school system.

Q. When does every school lose its racial identifiability? A. When it is no longer identified as a white or a black school.

Q. Identified by who and how do they identify it? A. Well, I would suggest that if you asked if Emerson School was an all-white or an all-black school, everyone would identify it as an all-black school. If Emerson were deseg-

regated to the point where it was no longer recognized by the community as an all-white or an all-black school, then it would be effectively desegregated.

Q. Is there any particular point when a school is no longer all white or all black? A. You mean in terms of numbers?

Q. Yes. A. I don't think you could determine it on the basis of numbers.

Q. What do you determine it on? A. On the basis of its identifiability.

Q. All right. Based on that criteria, Mr. Jordan, how is the [22] school system, how can you determine when a school system has reached maximum desegregation? A. When it has lost its racial identifiability. I don't know any better way of saying it.

Q. Well, that is fairly general. We have got Bienville School, for example, that had at one time been a traditionally white school. I don't know whether you are familiar with it or not. This past year enrollment was roughly fifty-fifty negro and white, but it's still identified as an all-white school, identified as a white school traditionally. Is that a desegregated school or isn't it? A. Well, I haven't seen the school in session but I would assume that a school that is fifty-fifty, then the school body would be a desegregated school, yes, sir.

Q. Even though everybody still identifies it as a white school? A. I think that if the school remained desegregated for a period of time, it would be recognized by the community as a desegregated school.

Q. So you would recognize the fifty-fifty as a deseg-

regated school? A. Yes, sir, but I don't think the ratio determines whether it's desegregated or not.

Q. But you do recognize the fifty-fifty? A. Yes, sir.

[23] Q. All right. How about sixty-forty? A. I don't know. I don't think I could answer it on the basis of numbers. You can go fifty-fifty, sixty-forty and then get down to ninety-ten.

Q. How do you determine then—the only way you could determine then, as you say, is by racial identification of the schools. Now, did you make any survey in Mobile before you started your work among the people to determine their racial identification of every school in Mobile? A. No, sir.

Q. As far as you know, Mobile had a totally desegregated school system then, did it? A. Before we came to Mobile, I have no idea what Mobile had.

Q. All right. After you got to Mobile? A. Well, after I got to Mobile, I took the charts that we had, the information given us by the school system and their amounts and used them as a start.

Q. And did they have a result of a survey as to how people identified schools, is that— A. Not to my knowledge.

Q. What did they contain? A. What did what contain?

Q. In determining, these charts and maps and things that you looked [24] at, did they have public opinion surveys giving how people identified schools or did they simply state the statistics of enrollment? A. No, we identified schools that had no white enrollment at all as identifiable as black schools, all black schools.

Q. A school that had some white enrollment, is that identified as an all-black school? A. I don't—by numbers I can't, I don't know how many it would take.

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Q. This is what I am trying to find out from you. You say you identify schools as to whether they are desegregated or not on the basis of how the public identifies them, and you came into the system and you made no effort to determine how the public identified schools, you used figures. A. Yes, sir, that's correct.

Q. What did you consider was the primary directive of the decree, the court decree, Mr. Jordan? A. To fully and affirmatively desegregate the schools in the school system consistent with sound administration practices.

Q. Do you consider a transfer policy allowing transfers for good cause non-racial in character a good educational policy? A. Yes, sir. I think we recommended a transfer policy.

Q. Did you recommend a transfer for good cause non-racial in char- [25] acter? A. We recommended a majority to minority transfer.

Q. That is transfer on a racial basis, isn't it? A. Well, that is where a student could transfer from a school in which his race was in a majority to a school in which his race is in a minority, white or black.

Q. That is then setting it up on a racial basis, isn't it, taking race into account in order to determine whether the transfer will be granted? A. Well, it applies to both races, yes, sir.

Q. But it is on a racial basis, isn't it, a racial criteria? A. Yes, sir, that is to, it is to assist students in transferring from a majority to a minority situation.

Q. The way you determine under that how to grant the transfer is on a racial basis, isn't it? You take your race into account to determine whether he's eligible for the

transfer, don't you? A. Well, it could be white or black, either one.

Q. But you do take his race into account, don't you? I'm not saying whether it's white or black. I'm asking you if it's transfer on a racial basis? A. Well, if I understand what you are saying, I assume so, yes, sir.

[26] Q. Well, you wrote it. I didn't. A. Well, I was not thinking in terms of a racial basis necessarily. I was thinking in terms of all students.

Q. Well, all students but you determine his race to determine whether he's eligible for transfer? A. Yes, sir.

Q. And the transfer policy that you recommended, Mr. Jordan, didn't set it up in terms of where there might exist a school containing a majority of negro students. You said you set it up on the basis of whether there was a majority of negro or a majority of white students, is that correct? A. I don't have that transfer policy in front of me.

Q. Well, I am asking you what you recommended. I can read the policy and I am sure you can, too. I want to know— A. If you will let me look at it, I can refresh my memory. I don't recall exactly what it says.

> Mr. Gorman: I think that the recommendations that they made are clear from the submission that they proposed and they should be clarified.

A. Well, I work on many of these and I don't recall exactly sometimes in detail the wording of each of them.

Q. Now, you said that you felt a transfer policy allowing a transfer for good cause, any good cause, non-racially oriented was [27] a good transfer policy. A. I think that within any school system there arises from time to time

special hardship cases that should be considered, a situation, a family situation or where an individual may work or the fact that he may be moving. I think that hardship situations exist, and where a hardship situation exists in a given family, they should be taken into consideration regardless.

Q. And you think under a desegregation plan a school system should be free to grant such transfers? A. On those hardship cases, yes, sir.

Q. Did you include such a provision in the plan submitted in regard to Mobile? A. Of course, I don't recall exactly what I wrote in that, what was written on that transfer. I will be glad to check one of them and refresh my memory.

Q. As Mr. Gorman says, it speaks for itself. I am just interested in whether you have any recollection of what you recommended in it. A. Of that particular clause I don't remember the wording.

Q. Okay. I am interested in your personal professional opinion as to whether it is desirable or undesirable as a general proposition to take young elementary school students, say the first, second and third grades, out of their neighborhoods and trans- [28] port them to other areas to attend school? A. I think that this is desirable if they obtain better education where they are being transferred to.

Q. Okay. What is your opinion generally on the neighborhood school concept? Do you think that is desirable or undesirable? A. I think it depends—I think it depends on the neighborhood. In some neighborhoods where it might be a deprived neighborhood, I think there is some definite advantage in taking the children out of that neighborhood into a more advantaged neighborhood for education.

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Q. And do you assume a deprived school as well as a deprived neighborhood or just a deprived neighborhood? A. Well, a deprived neighborhood, now it quite often happens that the school in a deprived neighborhood is also a deprived school.

Q. Assuming that it's not, you still think it's better? A. I think it's better to take them to the point where they can get the better education. Now, firmly believing, based on research, that desegregated education is superior to segregated education, if a community school results in segregated education, then I think that is bad education.

Q. All right. Assuming you've got a school system where your [29] enrollment is entirely white, do you think it desirable to stick with the neighborhood school concept? A. I think the same would hold. If the children in the deprived neighborhood, and assuming that the neighborhood is all white, can obtain better education and achieve better education outside that neighborhood, they should be carried out.

Q. You then don't agree with the neighborhood school concept? A. No, sir, I didn't say I didn't agree with the neighborhood school concept. I said that where it is a deprived neighborhood and better education can be achieved elsewhere, then they should go there.

Q. All right. Now, what study did you make of the neighborhoods in Mobile before formulating the plan that you have submitted to the court? A. We did not make any intensive study of neighborhoods. We visited a number of schools in a number of neighborhoods and we based it on the impressions that we got.

Q. Okay. Mr. Jordan, are you familiar with the term

"articulation" as it is used in connection with education? A. Well, I am not sure what sense you are using it in.

Q. All right. The sense I have in mind is the movement of students through an educational process as a regular group rather than being separated and moved to one school one year and [30] another school another year. Are you familiar with it in that sense? A. Yes, sir.

Q. What is your opinion of articulation? A. Well now, you are asking what is my opinion where the students move together or separately?

Q. Well, I am asking your opinion as to where the students move through a regular process of schools rather than being detached from each other and moved to a different school every year? A. Well, I think it depends on your grade organization, and as I recall, the Mobile plan was set up basically on a five-three-four involving school complexes, and I think most children in most zones would move together through the educational process.

Q. All right. Do you think it desirable or undesirable to have students attend a different school each year? A. Well, I think it depends on what the grade structure is. I wouldn't think it would be desirable for a student to attend twelve different schools in twelve years.

Q. Do you think it would be undesirable then to put them in a school for one year's time? A. In the Mobile plan we have several complexes set up where they would be in one school one year.

[31] Q. Do you think that is desirable as an educational concept? A. I think it's desirable in this particular case.

Q. Well, do you think it's desirable as a general educational concept? A. I think it's a concept that is used frequently throughout the country.

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Q. For what purpose? A. Based on many factors, every school system varies. I know that I have run into, I don't recall all the exact names but there is every conceivable grade organization imaginable today.

Q. What was your purpose in using it in Mobile? A. That fit the educational and desegregation plan the best based on capacities.

Q. Would you have recommended that in Mobile if you had not been attempting to maximize desegregation in the school system? A. Well, I don't know. I don't know what I would have recommended if I had been doing a pure educational study not under a court order. We were trying to follow the court order as well as educational practices.

Q. If you had been doing a pure educational study under the court order, would you have recommended schools with a grade organizational structure of one year only? [32] A. If I was striving to achieve a set organizational pattern, it probably would have resulted in some, yes, sir. I don't know whether it would have or not. I didn't make that type of study.

Q. Well, do you think generally schools of a one year grade structure is a desirable thing, is a desirable educational concept? A. I wouldn't deliberately set out to establish one grade structures in schools, no. These one grade structure schools in Mobile are really part of an overall complex, school complex.

Q. In your experience with desegregation, Mr. Jordan, have you found it generally desirable or undesirable to have a very small minority of one racial group or another in a school with a majority of the other? A. Generally speaking, I find it undesirable to have a small minority of any race.

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Q. In a school with a large majority of the other? A. Yes, sir.

Q. Whether the small minority is white or black? A. White or black, yes, sir.

Q. Did you interpret the court decree as requiring absolutely or as absolutely as you could do it the elimination of every all-negro school? A. Yes.

[33] Q. And every all-white school? A. Yes.

Q. What was the status of desegregation in this Cobb County school at the time that you left it? A. They were in compliance at the time I left.

Q. In compliance with what? A. H.E.W. guidelines.

Q. Did they have any all-negro schools? A. When I left, I believe there was one that has since been closed.

Q. Did they have any all-white schools? A. There are some all-white schools in Cobb County. The percentage of black students in Cobb County overall is small.

Q. How many schools do you have in Cobb County? A. I believe at the time I was there, there were fifty-five. Now, there may be more now.

Q. When did you leave there? A. In '67.

Q. When in '67? A. January the 1st.

Q. January the 1st? A. Yes.

Q. So your last experience was in 1966? A. Right.

[34] Q. The '66-'67 school year? A. Yes.

Q. And you say there were fifty-five schools at that time? A. I believe that is correct, the best I recall.

Q. And one all-negro and how many all-white schools were there at that time? A. I don't recall exactly how many there were. We didn't have—Cobb County never had a

black high school or a junior high school prior to the 1964 Civil Rights Law.

Q. How many negro students did you have? A. Let me see. There were about two thousand.

Q. Out of forty thousand? A. Yes, sir. That's approximately, give or take a few, I don't remember exactly. I think there were seventy students left in the all-black school which I understand is now closed.

Q. Did you think it necessary in Cobb County to eliminate, in order to achieve a desegregated school system to eliminate every all-white school? A. Well, it wouldn't be possible to eliminate all all-white schools because you don't have enough black students to go around.

Q. But you said in order to have a fully desegregated school system, you must eliminate every all-white school? A. That's right. Some of them will not be desegregated there [35] because there are not that many black students. The same is true in Mobile. Now, there are some all-white schools in Mobile, too, that we could not avoid because—there were also some all-black schools left in Mobile, all black and all white both.

Q. Do you think the school desegregation plan that you devised and submitted to the court for the Mobile school system is the best desegregation plan available for that school system? A. I feel that the plan is a workable plan.

Q. That wasn't what I asked you. A. It's not the only plan that could be devised.

Q. That's not what I asked you. A. It's the best plan that we could devise at the time.

Q. But do you feel that it is the best plan that could be devised for Mobile? A. I don't know.

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Q. I am asking your opinion. A. Well, I frankly don't know. It was the best I was able to come up with.

Q. It was the best you were able to come up with? A. Yes, sir. It was the best that the consultants that I used and I were able to come up with.

Q. Do you feel like someone else could come up with a better [36] plan? A. I feel like frankly that if the administration of the school system would work on a plan with the aim in mind of eliminating under the same criteria we did of fully desegregating all schools, that they probably would come up with a different plan that would be every bit as good or better.

Q. Were there any restrictions on your operations, Mr. Jordan, that prevented you from coming up with a better plan? You expressed it in terms of the best plan you could come up with at the time. What restrictions were there that— A. Well, there were no restrictions. I think the school system's position was that they couldn't do the type work we were doing. I can appreciate their position. Frankly, I would have preferred, when we were sitting there drawing lines and changing maps, to have had Mr. McPherson and a few of his personnel there helping us change the lines.

Q. Was there any restriction from the standpoint of time? Did you have all the time you needed? A. Time was a factor. The time was very limited and we had to work night and day.

Q. If you had had more time, do you think you might have done a better or a more thorough job? A. We could have gotten more in depth in curriculum and other [37] educational factors. Whether we would have come up with a better plan, I don't know.

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Q. You don't think then any more time would have helped you? You are satisfied that you had sufficient time to do the job that you did? A. We had sufficient time based on doing just a desegregation plan. Now, we did not have time to make correlating studies that you could make that would support the overall plan. We did not get deeply into curriculum. Had there been more time, we would have made an effort to meet with the curriculum people and—

Q. But you didn't need any more time to handle the desegregation part of it, you had sufficient time and used sufficient time to do that? A. We put in enough manhours to make that sufficient by working night and day and weekends and Sundays and every other day.

Q. To have had another week or another month of time would have been of no assistance to you? A. I don't know that it would have materially changed the plan, no, sir. I can't project what we would have done in another week.

Q. You were talking about your single grade schools being a part of a complex. What complex is the Hillsdale School a part of? [38] A. I would have to look at the maps.

Q. All right. Let me refresh your memory. Hillsdale School is in the western part of town. A. Yes, it's in the—

Q. The very extreme western edge, almost on the City limits in the western section. A. Yes, I know where it is but I don't recall the names of the other schools right near there.

Q. But it is part of a complex? If you will show me which complex it is a part of? A. Yes, sir. We were thinking of this being a whole high school complex, this being a whole, no, I mean elementary, junior high complex or middle school complex.

Q. All right. Now, you say "this" and you are waving your hand around the map. A. Scarborough, Hillsborough and Azalea Road.

Q. Scarborough, Hillsdale and Azalea Road being a junior high complex? A. Right, and the same thing with Trinity Gardens, Prichard, Mobile Training and Clarke. I'm sorry I can't recall those names from memory.

Q. That's all right. I can't either sometimes. Now, in formulating your attendance areas did you draw the lines on a non- [39] racial basis or on a basis taking race into account? A. We took race into account.

Q. Now, Mr. Jordan, in your efforts to provide compensatory education, and you may want to refresh yourself from your maps, is there any area where you bussed students to provide this compensatory education that involved anything other than taking groups of negro students and bussing them? A. Well, I think the term "to provide compensatory education" is not exactly right. To provide better education than they are getting now.

Q. I was just using your term and Dr. Hall's term. I just wanted you to tell me if there was any instance where you—and you said you were bussing them to provide this compensatory education, and I wanted to know if there was any area or any group of students that you are providing this compensatory education for other than bussing groups of negro students? A. No, sir. Well now, wait a minute. That may not be exactly true. In the County section—

Q. I am talking about in the urban portion of the system and I wasn't attempting to cross you up on that. A. All right.

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Mr. Philips: Let's take a break for a few minutes.

(Recess.)

[40] Q. Mr. Jordan, are you familiar with any provisions of the Civil Rights Act that prohibit the bussing of students on a racial basis, for racial purposes? A. Yes, sir.

Q. And do you feel that the plan you submitted to the court is in violation of that or consistent with that? A. I have no idea.

Q. You have no idea? A. The court order, as I saw it, asked that the schools be desegregated.

Q. Did you consider the court order as requiring you to do this consistent with applicable provisions of law and Congressional Acts? A. Well, I didn't know. I didn't know, so we put it in as a recommendation with the statement that it would have to be up to the legal authorities to determine whether it was legal or not. Frankly, I didn't know. The consultants that we used couldn't see any way other than that to achieve full, so we put it in with the statement that it would have to be up to the lawyers and the court to determine whether that was legal or not.

Q. Are you familiar with any Congressional enactment in the Appropriations law which provides no part of the funds contained [41] in this act may be used to force bussing of students in violation of any school or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents in order to overcome racial imbalance? A. Yes, sir, I have read that.

Q. What is that? A. Sir?

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Q. What is it, where is it contained? A. I don't know the exact number or anything. I have a copy of what you have just read.

Q. Where is it, a Congressional enactment, or what is it? A. It came out of the Federal Register so I assume that it's a Congressional enactment. I'm not positive.

Q. Did you feel in your interpretation of the court order and your development of a plan for the Mobile school system, did you feel bound to adhere to this Congressional enactment? A. We felt that we should obey the court order and developed the plan as near as possible to the court order, stating that we were uncertain as to its legality and leaving it to the court to make the decision. I couldn't anticipate what the court had in mind.

Q. Did you state that you were uncertain as to the legalities [42] of this particular enactment in the plan? A. No, sir, I didn't know. No, we said that—

Q. Your statement of uncertainty only dealt with bussing, didn't it? A. Right.

Q. So you didn't make any qualifying statement of uncertainty with reference to these other things? A. No, sir.

Q. Did you take them into account at all in the plan? A. No, sir. We just simply tried to develop the plan as we saw it around the court order.

Q. And that is based on your interpretation, without any legal interpretation? A. Yes, sir, my interpretation and Dr. Anrig's interpretation.

Q. What did you draw on in your interpretation? A. Sir?

Q. What did you draw on, what information, what knowledge did you draw on in interpreting the decree? A. We

just simply read it and tried to follow it as we understood what we read.

Q. You didn't attempt to interpret it in the light of any outside information at all? A. No, sir.

[43] Q. Just the bare paper there before you? A. Yes, sir.

Q. How many personnel, how many men do you have in your office, Mr. Jordan? A. In my personal office?

Q. Yes, working with you or under you in your area of responsibility. A. Let's see. We just brought on a new man Monday and counting myself and the new man we brought on Monday, I have ten.

Q. And how many school systems are you presently working with in compliance with these court orders to prepare these— A. With these court orders?

Q. Yes. A. Well, the count may be different today than what it was yesterday because I haven't seen the mail and I think some more have come in, but as of yesterday we had twenty-five in South Carolina, five in Georgia, four in Alabama, and thirty-two in Mississippi.

Q. Were all of these—you are working on all of these at the same time you are working on Mobile? A. No, sir, not all of them. We were working on some of them, not all of them, no.

Q. All of them were in your office under your jurisdiction at [44] that time? A. Yes, sir. Of course, we weren't using just the ten people in this office. We were using consultants from throughout as we did in Mobile. Now, that count may be different, as I say, today than it was yesterday.

Mr. Philips: I have no further questions.

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On Cross Examination by Mr. Gorman:

Q. Now, Mr. Jordan, with respect to your conversations with lawyers from the Justice Department concerning the Mobile plan, you mentioned that you talked to me about this plan. Just when did you talk with me concerning this? A. Last night.

Q. For about how long, do you remember? A. As I recall, it was about an hour.

Q. Did you talk to me at any time previous to that about the proposed plan for the Mobile system? A. No, only on the telephone the day before about changing the date that I was to be here.

Q. I see. And at that time did I call you to ask if the deposition, if you had received a request to be deposed? A. Yes.

Q. And did you at that time tell me that it would be much more [45] convenient for you if—

Mr. Philips: I think you are leading a little too much.

Mr. Gorman: Well, this is cross examination.

Mr. Philips: I realize it's cross examination but it's not an adverse witness and don't lead him.

Mr. Gorman: Well, I think I am entitled to on cross examination.

And did you—what request did you make of me at that time?

A. Well, yesterday we were, I had a meeting in Mobile with about eighteen people, consultants coming in from various parts of the country that we were setting up work to begin in the Mississippi court cases. They were

all arriving yesterday morning and it would have been most inconvenient to me not to be able to meet them and form the teams and get them started out on the road, so I asked you if you could get me changed until today, but if you couldn't, that I would appear and, Mr. Philips, I appreciate that.

Mr. Philips: I am glad to accommodate you. My whole purpose in going into that is not to show that you were not cooperative in appearing but simply to show that any pleas that you had in that regard, you immediately turned to the Justice Department rather than somebody else.

Q. Now, in addition to the Mobile plan, have you worked on other [46] school, developing desegregation plans for other school systems? A. Yes, sir.

Q. About how many plans have you worked on of this nature? A. You mean by myself alone?

Q. Well, that you have directly worked on either by yourself or with some assistance from other people. A. Well, I suppose I have been involved in developing plans for fifty school systems at least at this point, court orders and otherwise.

Q. About how many of those fifty were either you or your office brought into by way of court orders—that is, orders that directed H.E.W. to provide systems? A. I believe twenty-one approximately. I can only be approximate on these figures. I can't be exact. I would have to dig out the records on those.

Q. Of these approximately twenty-one systems, have you, how many plans have actually been submitted either to the school boards or to the courts? A. Have been submitted?

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Q. Yes, sir. A. Oh, they all have been submitted.

Q. And have some of these plans been adopted by the school sys- [47] tems without a direct court order to adopt them? A. Well, in the court order districts in South Carolina which were the first ones we worked on, out of the twenty-one court orders the school systems and I submitted jointly four. We had four plans that we agreed on. In the others there were agreements to varying degrees and they are still in the process of being heard. Of the ones that we have done that did not involve court orders, I am trying to remember now, Tift County in Georgia, Twiggs County in Georgia, are a couple that we worked on at the invitation of the superintendents that they adopted that were not court orders. Valdosta is another one we have recently completed. I don't know whether the board has adopted it yet or not. The superintendent seems to think they would. I don't know whether they have yet or not.

Q. As an educator do you believe that if transportation of students is necessary in order to provide a desegregated education or learning environment for students, that such, the value, the educational value of obtaining a desegregated learning environment outweighs any inconvenience or educational problems with such transportation? A. It is my belief that desegregated education is better than segregated education, and if we have to do some bussing to achieve that, I think it's better.

[48] Q. That is outside of any compensatory educational advantages it might have for particular students? A. Students, research has shown that students achieve better in a desegregated setting.

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Q. Now, did the plan you proposed rule out the possibility of transfers for educational reasons, tranfer of students? A. I am not sure I understand that.

Q. All right. In the plan that you proposed Mr. Philips asked you whether or not you believed that transfers for non-racial reasons, educational reasons, were desirable for any school system. Now, does the plan that you propose rule out the possibility of any such transfers? A. Well, I am not sure what you mean by educational reasons. I think an educational reason is the majority-minority. I think that is an educational reason. In addition to that, as I indicated, I think that the other transfers that would be justified is hardship cases.

Q. Now, in response to Mr. Philips' questions you indicated that in drawing up the plan that was proposed by you and your staff for the Mobile system, that you primarily used the decree which ordered H.E.W.—

Mr. Philips: His testimony was that he used the decree entirely.

Q. Now, did you also use your past experience that you have had [49] with formulating desegregation plans for other school systems when you worked on this Mobile plan? A. Yes, I used what background I have plus the background of all the consultants. I felt it necessary to have several competent educators with me.

Mr. Gorman: I have no further questions. Do you have anything further?

Mr. Philips: Just a very few.

Deposition of Jesse J. Jordan on July 16, 1969

On Re-Direct Examination by Mr. Philips:

Q. You said that in your philosophy that a desegregated education is superior to a segregated education, I believe you said. How long have you had that philosophy? A. Well, I don't know exactly when I first, when the Civil Rights Act of '64 was when I first began to read on it. I was greatly impressed by Dr. Morrill Weinberg's study in this field published under Phi Delta Kappa which is the professional educators' fraternity. Dr. Weinberg, I don't know him personally, of course, but I have read his reports over a period of years and of several thousand schools, made quite a research into the area of education and desegregation, and his conclusion on that study was that students, that disadvantaged students—

Q. Now, I am not asking for his opinion. I am asking for— [50] A. Well, those are my opinions based on his studies.

Q. How long have you had—you have had that philosophy then since 1964? A. Well, I have had that philosophy, I can't give you a date. I have had it for several years.

Q. Well, give me a date as near as you can, within a year?

Mr. Gorman: He just said that he couldn't give you a given time.

Mr. Philips: Well, I think he can.

A. Well, it's something that evolves as you go along. You change, educational theories and practices change as you move along.

Deposition of Jesse J. Jordan on July 16, 1969

Q. Has it been since the Civil Rights Act of 1964? A. Yes, sir. That brought it to a head. That is when we first began to critically examine the situation.

Q. Now, you mentioned, I have forgotten, I can't remember the man who made the study, are you familiar—what is the name of the man whose study you referred to as influencing your thinking? A. Dr. Weinberg.

Q. Dr. Weinberg? Are you familiar with any other studies in this field? A. Yes, sir, Dr. Coleman's report.

Q. Do you agree or disagree with the Coleman report? A. I agree.

[51] Q. Entirely? A. I think so. I don't recall any particular point that I disagree.

Q. Is it inconsistent in any respect with Dr. Weinberg's study? A. Yes, sir.

Q. It is inconsistent? A. It is consistent. They reached similar conclusions.

Q. There is no inconsistency in the Coleman report and the Weinberg report? A. Well, if you—I am not competent to answer that question. Their conclusions are similar.

Q. Okay. Are you familiar with any studies on this subject by Dr. Vanderhaag of Fordham University? A. No, sir.

Q. Are you familiar with any study or any writings on this subject by Dr. Hill, President of Peabody College? A. I have read articles of his. I am not familiar with his detailed studies.

Q. All right. Do you think his studies and his philosophies and his writings— A. I am not familiar enough with Dr. Hill's philosophy to know exactly what his philosophy is.

Deposition of Jesse J. Jordan on July 16, 1969

Q. Do you consider him an authority in this field? [52]
A. I do not know Dr. Hill personally.

Q. Do you consider him an authority in this field? A. I do not know. I am not certain. I know the name, that is all.

Q. How about Dr. Vanderhaag, do you consider him to be an authority in this field? A. Well, I think he is recognized as an authority by many educators.

Q. Do you recognize him as an authority?

Mr. Gorman: He has just testified that he doesn't know Dr.—

A. Well, I am not familiar enough with that particular study to—

Q. I was asking about Dr. Vanderhaag. We had discussed Dr. Hill previously. I am asking you—you said many considered Dr. Vanderhaag an authority and I am asking you if you consider him an authority. A. I don't know enough about his work. I would assume so, yes, sir. I am not familiar enough with his writings to know.

Q. Now, you said you have this philosophy that a desegregated education is superior to a segregated education. What is a desegregated education? A. It is education in a school that does not have racial identifiability. I think if we are going to live in a desegregated [53] society, then I think it is extremely important that our children go to desegregated schools.

Q. What is your thinking on resegregation? Suppose you set up an absolutely perfect desegregation plan, then it operates into resegregation. Do you think you must

then re-do your desegregation plan to desegregate again? A. Well, of course, if a plan results in resegregation, your problems are still great. Hopefully the best solution is to try to devise a plan that will not create that situation. I don't know whether this one does or not. Hopefully it does not, but if a school system resegregates after desegregation, then, of course, it has a continuing problem.

Q. And you think the best thing to do to begin with is to try to devise a plan that would not tend to result in resegregation? A. Yes, sir. If you could devise a plan that would effectively desegregate every school, then it would not be as likely to resegregate as it would if some were desegregated and others weren't.

Q. Suppose it did resegregate, you have only told us that you would have a continuing problem. We are quite aware of that. What we want to know from you, the expert, is what would you do when they resegregated? [54] A. I think that would depend on the circumstances and on the court order and what the situation was. I don't think I could give a general answer. This is a problem that the City of Atlanta is wrestling with now. They went through a desegregation process and a resegregation process. They are now seeking ways to overcome this, and I think each system would have to be taken independently.

Q. Okay. You mentioned some counties in Georgia that you had worked on desegregation plans without the benefit of court order, Tift County, Twiggs County, and Valdosta which I assume is a city system. A. Yes, sir.

Q. Would you name the others? A. I don't recall, Mr. Philips. I could dig it out of my records and send you a list of them.

Q. Would you do that? A. Yes, sir. I don't recall the exact—those are ones that I personally worked on but our office has worked on a number.

Q. If you would send me all of those, a list of all of those, I would be grateful. A. All right. I will have to have time to do it, though. I've got to go to Mississippi. I am not exactly positive of the date I will get them here, but I will do it.

[55] Q. All right. Perhaps you can call someone in your office and get them to do it. A. There's no one in my office. They are all in Mississippi. That's where I'm fixing to be.

Mr. Philips: Okay. I think that is all. I don't have anything else. Thank you very much, Mr. Jordan.

• • • • •

District Court Order of August 1, 1969

It is difficult for one unschooled in the field of education to implement a plan to operate the Mobile County Public School System in any fashion, but I am confronted with doing just that in what I hope will be a practical and workable way within the law.

The Supreme Court and the Court of Appeals have interpreted the law. We may agree with their interpretation or not, but we must follow it.

In approaching this task, which is without doubt the most difficult as well as important that I have ever encountered, I have called upon any and every source at my command for assistance.

The Department of Health, Education and Welfare, with inadequate time, has filed a plan with which I can agree in part and disagree in part. It contains some provisions which I think are both impractical and educationally unsound. HEW readily acknowledges that this plan is not perfect and invites the School Board to suggest improvements. The School Board has filed absolutely no plan for the assistance of the court. The professional staff of the Mobile Public School System did, as authorized by the School Board, work with HEW in attempting to formulate such a plan, but their efforts did not meet with the approval of the School Board. The court has the benefit of such work, but wishes to make it clear that such was never approved by the School Board, though the end results in many areas were substantially in accord with HEW.

With eight years of litigation, entailing countless days and weeks of hearings in court, it has been clearly established that the Mobile County School System must forth-

with be operated in accordance with the law of the land. What this school system needs is to educate children legally, and not to engage in protracted litigation. After all, the children are the ones in whom we should be most interested. With this in mind, I get to the business at hand.

The plan filed by HEW calls for its implementation by the beginning of the 1969-70 school term of all rural schools and all metropolitan areas west of Interstate Highway 65. It clearly states that its plan for all metropolitan areas east of I-65 cannot possibly be implemented before the 1970-71 school term. In this, the court is in complete agreement.

As to the rural schools and all metropolitan areas west of I-65, the Court ORDERS, ADJUDGES and DECREES the following plan under which the Mobile County School System will operate, beginning with the school term of 1969-70:

I.

Attendance area zones for all rural schools of the System, elementary, junior high and high schools, are directed in accordance with maps hereto attached, marked Exhibits 1, 2 and 3.

II.

Attendance area zones for the metropolitan schools located west of I-65, elementary, junior high and high schools, are directed in accordance with maps hereto attached, marked Exhibits 4, 5 and 6.

III.

Attendance area zones for the metropolitan elementary and junior high schools located *east* of Interstate Highway

65 shall be the identical zones as those utilized for the past school year, 1968-69.

IV.

The metropolitan senior high schools located *east* of Interstate Highway 65, including the Toulminville High School, shall operate under the freedom of choice desegregation plan and each student shall attend the school which was selected during the recent choice period of May, 1969; *however,* every senior high school student living west of Interstate Highway 65 must attend the senior high school serving his attendance area, notwithstanding the student's choice to attend a high school located east of Interstate Highway 65.

V.

The court is not satisfied with the Plan set out by HEW for the metropolitan schools lying east of I-65 for implementation for the 1970-71 school term. The court knows that further study will result in a far better and more practical, as well as legal, plan.

VI.

The School Board is hereby ordered to file with the court, not later than December 1, 1969, a suggested desegregation plan for all of the metropolitan schools located east of I-65. This plan shall be formulated by the School Board in consideration of the mandate of the Fifth Circuit Court of Appeals of June 3, 1969 and after further study and collaboration with HEW officials. The School Board is hereby ordered to file a detailed progress report to the court on

October 10, 1969 and November 20, 1969 outlining the steps taken in formulating the plan.

The court fervently hopes that the decree herein entered and the plan of December 1, 1969 will end further litigation for the public school system of Mobile County.

VII.

Faculty

For the 1969-70 school term and subsequent years, the faculty of each school, including the principals, teachers, teacher's aides, and other staff members who work directly with the children, shall have a racial composition not identifiable as a school for negro or white students.

For the upcoming year, the School Board shall assign, as far as is educationally feasible, the staff described above so that the racial composition of each school's faculty shall reflect substantially, the racial composition of the teachers in the entire school system.

Staff members who work directly with children, and professional staff who work on the administrative level, shall be hired, assigned, promoted, paid, demoted, dismissed and otherwise treated without regard to race, color, or national origin, except to the extent necessary to erase segregation.

If there is to be a reduction in the number of principals, teachers, teacher-aides or other professional staff employed by the school district, which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition, if there is any such dismissal or demotion, no staff vacancy

may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

"Demotion" as used above includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

VIII.

The Toulminville School for the year 1969-70 is to be operated in the same grade level as it was last year.

IX.

The five per cent transfer provision for children of minority groups set out in the court's plan of last year is completely deleted.

X.

Public Notice

The School Board shall publish or cause to have published in the local newspaper, the complete text of this decree and the maps, identified as Exhibits 1, 2, 3, 4, 5, and 6, to this court's decree. The decree and maps shall

be published once a day for three consecutive days, alternating the morning and evening editions of the newspaper. In addition, the School Board shall post or cause to be posted in a conspicuous place in each school in the System, and at the offices of the School Board, copies of the map outlining the particular school's area attendance zone. This notice provision also applies to those elementary and junior high schools, east of I-65, which shall operate under last year's attendance area zones.

Dated: August 1, 1969.

/s/ DANIEL H. THOMAS

[Maps omitted. See original record]

School Board Report to the Court Filed November 26, 1969

Come now the Defendants, the Board of School Commissioners of Mobile County, Et al, and file herewith the reports of information required by the court to be filed in the court on or before November 26, 1969 (being the same reports as paragraph VI of the court's order of May 13, 1968). The reports are attached hereto.

School Board Report to the Court Filed November 26, 196

ENROLLMENT REPORT
MOBILE COUNTY PUBLIC SCHOOLS
(Based on Net Enrollment - Sept. 26, 1969)

SCHOOLS		1	2	3	4	5	6	7	8	9	10	11	12	TOTAL
Adams	White	38	42	36	54	42	234	240						686
	Negro	28	30	31	36	29	75	82						311
	Total	66	72	67	90	71	309	322						997
Alba	White	100	110	141	119	124	149	171	134	150	119	102	95	1514
	Negro	9	12	11	13	13	15	24	26	25	16	20	10	194
	Total	109	122	152	132	137	164	195	160	175	135	122	105	1708
Arlington	White	60	78	44	58	67								307
	Negro	52	47	43	42	53								237
	Total	72	125	87	100	120								544
Austin	White	64	64	75	67	60	66							396
	Negro	4	4	1	3	8	2							22
	Total	68	68	76	70	68	68							418
Azalea Road	White							500	539					1039
	Negro							19	19					38
	Total							519	558					1077
Baker	White	55	60	63	70	82	64	114	133	96	87	78	67	969
	Negro	9	8	8	8	7	10	9	14	11	4	5	4	97
	Total	64	68	71	78	89	74	123	147	107	91	83	71	1066
Belsaw	White						6	9	6					21
	Negro						54	73	80					207
	Total						60	82	86					228
Bienville	White	46	43	30	56	35	52							262
	Negro	42	54	53	49	47	54							299
	Total	88	97	83	105	82	106							561
Blount	White													----
	Negro								454	416	439	284	300	1893
	Total								454	416	439	284	300	1893
Brazier	White													----
	Negro	154	188	181	190	219	191							1123
	Total	154	188	181	190	219	191							1123
Brookley	White	81	81	84	82	90	81							499
	Negro	15	12	5	18	13	12							75
	Total	96	93	89	100	103	93							574
Burroughs	White	26	37	38	36	27	28							192
	Negro	52	46	52	52	37	51							290
	Total	78	83	90	88	64	79							482
Calcedeaver	White	25	26	29	30	27	22							159
	Negro													---
	Total	25	26	29	30	27	22							159

SCHOOLS		1	2	3	4	5	6	7	8	9	10	11	12	TO
Caldwell	White													
	Negro	26	46	58	76	59	49							
	Total	26	46	58	76	59	49							
Carver	White							1						
	Negro						429	428						
	Total						429	429						
Central	White													
	Negro									391	434	364	281	
	Total									391	434	364	281	
Chickasaw	White	55	77	82	84	98	98							
	Negro		1	1		1								
	Total	55	78	83	84	99	98							
Child Guid.	White				64									
	Negro				20									
	Total				84									
Citronelle	White						92	112	123	133	133	113	94	
	Negro						18	49	39	66	74	80	74	
	Total						110	161	162	199	207	193	168	
Clark	White							297	353	439				
	Negro							83	43	77				
	Total							380	396	516				
Council	White													
	Negro	96	88	107	91	99								
	Total	96	88	107	91	99								
Craighead	White						77	42						
	Negro						125	280						
	Total						202	322						
Crichton	White	83	89	74	105	79	77							
	Negro	46	40	36	39	36	40							
	Total	129	129	110	144	115	117							
Davidson	White									636	621	582	463	
	Negro									24	19	16	13	
	Total									660	640	598	476	
Davis	White	99	95	92	109	97	99							
	Negro	34	29	25	25	34	31							
	Total	133	124	117	134	131	130							
Dickson	White	117	136	149	157	150	126							
	Negro	27	29	43	26	38	30							
	Total	144	165	192	183	188	156							

SCHOOLS		1	2	3	4	5	6	7	8	9	10	11	12	TOTAL
Dixon	White	41	32	48	46	41	41							249
	Negro	32	32	29	35	26	35							189
	Total	73	64	77	81	67	76							438
Dodge	White	94	101	114	122	109	135							675
	Negro	11	8	14	13	12	7							65
	Total	105	109	128	135	121	142							740
Dunbar	White							2						2
	Negro							404	433					837
	Total							406	433					839
Eanes	White							323	398	245				966
	Negro							35	73	26				134
	Total							358	471	271				1100
Eight Mile	White	74	43	53	58	64	66	110	118					586
	Negro	16	14	12	13	12	12	12	19					110
	Total	90	57	65	71	76	78	122	137					696
Emerson	White	1	1	1			1							4
	Negro	43	52	63	81	57	58							354
	Total	44	53	64	81	57	59							358
Evans	White				54									54
	Negro				87									87
	Total				141									141
Fonde	White	89	108	118	126	118	120							679
	Negro	6			4	1								11
	Total	95	108	118	130	119	120							690
Fonvielle	White													----
	Negro	190	199	195	230	180	215							1209
	Total	190	199	195	230	180	215							1209
Forest Hill	White	87	96	108	139	130								560
	Negro													---
	Total	87	96	108	139	130								560
Glendale	White	77	94	80	86	77	94							508
	Negro	26	23	25	23	22	30							149
	Total	103	117	105	109	99	124							657
Gorgas	White				1		1							2
	Negro	170	187	204	207	203	182							1153
	Total	170	187	204	208	203	183							1155
Grand Bay	White	118	105	96	124	92	95							630
	Negro	24	19	27	25	29	22							146
	Total	142	124	123	149	128	117							776

SCHOOLS		1	2	3	4	5	6	7	8	9	10	11	12
Grant	White	1											
	Negro	225	244	272	276	257							
	Total	226	244	272	276	257							
Griggs	White	132	156	163	138	142	134						
	Negro	7	5	9	7	7	6						
	Total	139	161	172	145	149	140						
Hall	White												
	Negro	112	102	120	125	104	123						
	Total	112	102	120	125	104	123						
Hamilton	White	110	103	98	111	102	105						
	Negro												
	Total	110	103	98	111	102	105						
Hillsdale	White						123	157	151				
	Negro						51	74	92				
	Total						174	231	243				
Holl. Island	White	55	70	76	49	80	64						
	Negro	1	1										
	Total	56	71	76	49	80	64						
Howard	White												
	Negro	82	79	79	64	68	75						
	Total	82	79	79	64	68	75						
Ind. Springs	White	87	76	83	90	107	77						
	Negro	3	1	2	2	3	1						
	Total	90	77	85	92	110	78						
Lee	White	100	84	89	81	115							
	Negro	26	28	19	20	26							
	Total	126	112	108	101	141							
Leinkauf	White	45	46	29	44	52	52						
	Negro	31	26	28	35	30	27						
	Total	76	72	57	79	82	79						
Lott	White	86	84	106	100	89							
	Negro	23	27	33	40	22							
	Total	109	111	139	140	111							
Maryvale	White	73	92	83	117	97	86						
	Negro	7	13	8	10	11	6						
	Total	80	105	91	127	108	92						
Hertz	White	77	77	78	74	83	72						
	Negro												
	Total	77	77	78	74	83	72						

SCHOOLS		1	2	3	4	5	6	7	8	9	10	11	12	TOTAL
[illegible]. Co. High	White							116	113	105	100	97	71	602
	Negro							40	49	55	43	34	30	251
	Total							156	162	160	143	131	101	853
[illegible]. Co. Trng.	White													----
	Negro						201	176	205	238	181	149	133	1283
	Total						201	176	205	238	181	149	133	1283
[illegible]ntgomery	White								—	202	231	182	172	787
	Negro									11	9	4	6	30
	Total									213	240	186	178	817
[illegible]rningside	White	137	125	132	123	107	116							740
	Negro													---
	Total	137	125	132	123	107	116							740
[illegible]. Vernon	White	20	17	19	15	13								84
	Negro	74	53	71	70	90								358
	Total	94	70	90	85	103								442
[illegible]rphy	White									490	731	690	691	2602
	Negro									69	88	47	35	239
	Total									559	819	737	726	2841
[illegible]d Shell	White	34	50	41	27	55	42							249
	Negro	14	25	19	16	18	20							112
	Total	48	75	60	43	73	62							361
[illegible]chard	White	151	131	175	137	160								754
	Negro	26	21	20	23	23								113
	Total	177	152	195	160	183								867
[illegible]vens	White													----
	Negro	158	175	180	179	200	208							1100
	Total	158	175	180	179	200	208							1100
[illegible]lmer	White	9	13	11	12	12								57
	Negro	127	124	140	137	146								674
	Total	136	137	151	149	158								731
[illegible]illips	White							349	403					752
	Negro							67	55					122
	Total							416	458					874
[illegible]ichard	White						13	107	108	125				353
	Negro						21	50	56	43				170
	Total						34	157	164	168				523
[illegible]in	White							195	234	225	254	232	156	1296
	Negro							20	31	15	32	9	5	112
	Total							215	265	240	286	241	161	1408

School Board Report to the Court Filed November 26, 1969

SCHOOLS		1	2	3	4	5	6	7	8	9	10	11	12
Robbins	White	1	2	1	1	1							
	Negro	147	158	163	177	170							
	Total	148	160	164	178	171							
St. Elmo	White							192	244				
	Negro							30	24				
	Total							222	268				
Saraland	White	118	131	142	139	131							
	Negro	4	11	3	5	10							
	Total	122	142	145	144	141							
Satsuma	White								269	297	221	212	151
	Negro								61	62	71	44	29
	Total								330	359	292	256	180
Scarborough	White						181	229	228				
	Negro						39	38					
	Total						220	267	228				
Semmes	White	69	76	64	99	69	119	246	246				
	Negro	1			1			11	12				
	Total	70	76	64	100	69	119	357	258				
Shaw	White									355	337	318	232
	Negro									60	76	47	54
	Total									415	413	365	286
Shepard	White	39	64	75	79	82	70						
	Negro	4	7	4	5	2	7						
	Total	43	71	79	84	84	77						
Stanton Road	White												
	Negro	121	170	169	180	159	178						
	Total	121	170	169	180	159	178						
Tanner Wms.	White	55	56	67	60	54	48						
	Negro	2	2		3	1	1						
	Total	57	58	67	63	55	49						
Theodore	White							135	127	345	353	287	219
	Negro							48	59	64	69	54	41
	Total							183	186	409	422	341	260
Thomas	White	27	44	36	40	33	42						
	Negro	19	20	13	18	20	11						
	Total	46	64	49	58	53	53						
Toulminville	White												
	Negro										443	381	311
	Total										443	381	311

SCHOOLS		1	2	3	4	5	6	7	8	9	10	11	12	TOTAL
inity Gdns.	White													----
	Negro							219	210	196	176	160	123	1084
	Total							219	210	196	176	160	123	1084
gor	White										611	463	430	1504
	Negro										113	57	25	195
	Total										724	520	455	1699
shington	White													----
	Negro							561	534	433				1528
	Total							561	534	433				1528
tlawn	White	68	80	89	81	108	90							516
	Negro													---
	Total	68	80	89	81	108	90							516
istler	White	27	29	23	73	29	46							227
	Negro	31	30	44	62	33	31							231
	Total	58	59	67	135	62	77							458
itley	White													---
	Negro	70	77	87	85	76								395
	Total	70	77	87	85	76								395
11	White	125	125	142	139	126								657
	Negro	31	28	38	33	45								175
	Total	156	153	180	172	171								832
lliams	White	80	80	84	90	67	96							497
	Negro	11	11	9	6	14	9							60
	Total	91	91	93	96	81	105							557
lliamson	White										1			1
	Negro							260	245	245	203	189		1142
	Total							260	245	246	203	189		1143
lmer	White	44	55	53	58	59	64							333
	Negro	14	9	9	11	9	7							59
	Total	58	64	62	69	68	71							392
odcock	White	32	37	40	53	44	33							239
	Negro	14	14	20	27	20	24							119
	Total	46	51	60	80	64	57							358
AND TOTAL	White	3232	3421	3554	3877	3626	3497	3647	3927	3843	3799	3356	2841	42620
	Negro	2497	2629	2783	3023	2799	2793	2832	2848	2527	2532	1958	1663	30884
	Total	5729	6050	6337	6900	6425	6290	6479	6775	6370	6331	5314	4504	73504

School Board Report to the Court Filed November 26, 1969

EXPLANATION OF COLUMNS - SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES
MOBILE COUNTY PUBLIC SCHOOLS - MOBILE, ALABAMA

Column (1) Name of school and grade level.

(2) Number of teachers assigned for 1969-70 as of September 24, 1969.

(3) Number of white and non-white teachers assigned. This colum equals column (2).

(4) This column indicates number of teachers resigning between May 1, 1969 thru August 1969.

(5) Vacancies filled by new teachers or transfers.

(6) Vacancies not filled as of September 24, 1969.

(7) New teachers assigned for 1969-70.

(8) Number of transfers received from schools listed.

(9) Number of transfers to the schools listed.

School	(1) No. Teachers Assigned 69-70	White	Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Alma (1-7)										
Elem. 1-5	11	4	7	1	1	0	1	5	1 Calcedeaver	1 Blount
Sec. 6-7	24	16	8						6 Satsuma	2 Pritchard
Spec.Ed	1		1						4 Lee	7 Satsuma
	36	20	16						1 Whistler	1 Azalea Rd.
										1 Mala
										1 Washington
Alba (1-12)										
Elem. 1-5	21	16	5	8	5	3	3	7	3 St. Elmo	3 Dixon
Sec. 6-12	37	33	4						4 Dixon	1 Grant
Spec.Ed	1		1						1 Dauphin Island	1 Carver
	59	49	10						1 Washington	1 Lott
									1 Griggs	1 Emerson
										1 Davidson
										1 Grand Bay
										1 Burroughs
Arlington										
Elem. 1-5	16	13	3	3	2	1		1	1 Fonvielle	None
									1 Woodcock	
Austin										
Elem. 1-6	13	10	3	1	1			1	1 Brazier	1 Calcedeaver
									1 Orchard	
Azalea Road										
Sec. 7-8	40	35	5	5	2	3		2	1 Semmes	1 Hillsdale
Spec. Ed.	1	1							2 St. Elmo	1 Trinity Gardens
	41	36	5						1 Washington	1 Helping Teacher
									1 Adams	

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Baker (1-12)										
Elem. 1-5	11	10	1	5	5	0	1	6	1 Lee 1 Hamilton 1 Dunbar	1 Tanner Wms. 1 Shaw
Sec. 6-12	27	25	2							
Spec. Ed.	2	2								
	40	37	3							
Belsaw										
Sec. 6-8	9	2	7	0	0	0		0	1 Calcedeaver 1 Mt. Vernon	5 Mt. Vernon 2 Bienville 3 Lott 1 Dodge
Bienville										
Elem. 1-6	17	11	6	4		1		1	2 Belsaw 1 Whitley	1 Eanes 1 Whitley
Blount										
Sec. 8-12	69		67	5	1	3		2	1 Toulminville 1 Central 1 Lott	1 Voc.Rehab. 1 Rain 2 Vigor 2 Murphy
Spec. Ed.	1	2	1							
	70	2	68							
Brazier										
Elem. 1-6	35	3	32	2	1	1		1	1 Chickasaw 1 Calcedeaver 1 Mt. Vernon	1 Hollingers Isl. 1 Austin 1 Wilmer

(1) School	(2) No. Teachers Assigned 69-70	(3) Units: White	(3) Units: Non-White	(4) Vacancies Occurred	(5) Vacancies Filled: White	(5) Vacancies Filled: Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Brookley Elem. 1-5 Spec. Ed.	17 1 18	15 15	2 1 3	4	4			2	1 Owens 1 Fonde 1 Burroughs	1 Title I Helping Tea.
Burroughs Elem. 1-5 Spec. Ed.	15 1 16	10 0 10	5 1 6	0	0	0		1	2 Davis 1 Shepard 2 Griggs 1 Davis 1 Dodge 1 Mobile Co. High	1 Brookley 1 Alba 1 Griggs 2 Davis 1 Fonvielle
Calcedeaver Elem. 1-6	5	3	2	3	1	0		0	1 Austin	1 Citronelle 1 Satsuma 1 Belaw 1 Adams 1 Brazier
Caldwell Elem. 1-6 Spec. Ed.	12 2 14	1 0 1	11 2 13	0	0	0		0	1 Mt. Vernon	
Carver Sec. 8-7	34	2	32	0	0	0		0	1 Alba	1 Washington 1 Craighead

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Central Sec. 9-12 Spec. Ed.	56 2 58	2 0 2	54 2 56	10	1	3	1	4	1 Theodore	1 Blount 1 Rain 1 Vigor 1 Murphy
Chickasaw Elem. 1-6	15	12	3	3	0	1		1	1 Whitley	1 Brazier
Citronelle Sec. 6-12 Spec. Ed.	46 1 47	30 1 31	16 0 16	4	2	0		5	1 Clark 1 Satsuma 1 Calcedeaver 13 Lott 1 Semmes 1 Lee	2 Mt. Vernon 10 Lott 1 Semmes
K. J. Clark Sec. 7-9 Spec. Ed.	47 2 49	43 2 45	4 0 4	9	3	0		8	1 Dunbar	1 Rain 1 Dunbar 2 Mobile Co.Trng 1 Phillips 1 Citronelle 1 Scarborough 1 Hillsdale 1 Eanes
Council Elem. 1-5	14	3	11	3	3	0		3		1 Williams 1 Tanner Wms. 1 Grand Bay

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School Board Report to the Court Filed November 26, 1969

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 22, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Craighead Sec. 6-7 Spec. Ed.	21 3 24	11 2 13	10 1 11	5	3	1		2	1 Mobile Co. High 1 Carver 1 St. Elmo	
Crichton Elem. 1-6 Spec. Ed.	21 2 23	17 2 19	4 4	2	1	0		1	1 Emerson	1 Dickson
Davidson Sec. 9-12	92	85	7	18	12	2	1	14	1 Ind. Spra. 1 Theodore 1 Alba 2 Satsuma 1 Blount 1 Mobile Co. Trng.	
Davis Elem. 1-6 Spec. Ed.	22 1 23	19 1 20	3 0 3	3	2	1		1	2 Helping Teachers 2 Burroughs	1 Burroughs
A.R. Dickson Elem. 1-6 Spec. Ed.	29 1 30	23 23	6 1 7	1	1	0	1	1		5 Hillsdale 1 Crichton 1 Howard
Dixon Elem. 1-6	13	8	5	0	0	0		1	5 Alba 1 Westlawn	4 Alba 1 Grand Bay 1 Phillips

School Board Report to the Court Filed November 26, 1969

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Dodge Elem. 1-6	22	18	4	4	2	2		3	1 Indian Sprgs. 1 Belsaw	1 Westlawn
Dunbar Sec. 7-8 Spec. Ed.	32 2 34	2 2	30 2 32	3	1	0		1	1 Theodore 1 Murphy 1 Clark 1 Child Guidance	1 Owens 1 Baker
Eanes Sec. 7-9 Spec. Ed.	41 2 43	35 1 36	6 1 7	6	3	2		4	1 Clark 1 Bienville 4 St. Elmo	1 Mobile Co.Trn 1 Theodore
Eight Mile(1-8) Elem. 1-5 Sec. 6-8	13 10 23	9 10 19	4 0 4	2	1	0	1	0	1 Whitley 1 Forest Hill 1 Lee	-
Emerson Elem. 1-6 Spec. Ed.	15 1 16	1 0 1	14 1 15	2	1	1		1	1 Alba	1 Whitley 1 Alba 1 Crichton
Evans Spec. Ed.	14	7	7	4	4	0		1	1 Wilmer 1 Satsuma	-
Fonde Elem. 1-6	20	18	2	4	3	0		3	1 Owens	1 Brookley

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Pondella Elem. 1-6	35	1	34	0	0	0		1	1 Burroughs	1 Arlington
Spec. Ed.	3	0	3							
	38	1	37							
Tower Hill Elem. 1-5	17	15	2	4	3	1		2	1 Semmes 1 Calvert	1 Phillips
Spec. Ed.	1	0	1							
	18	15	3							
Glendale Elem. 1-6	19	14	5	5	2	3		0	1 Grand Bay 2 Robbins 1 Grant	1 Whitley
Borgne Elem. 1-6	34	1	33	0	0	0		0	1 Scarborough	
Grand Bay Elem. 1-6	23	19	4	6	3	3		5	1 Mobile Co. High 2 Dixon 1 Council	1 Glendale 1 Mobile Co.Hi.
Alba Grant Elem. 1-5	37	3	34	1	1	0		2	1 Alba 1 Toulminville	1 Leinkauf 1 Glendale
Spec. Ed.	3	0	3							
	40	3	37							
Bridger Elem. 1-6	27	22	5	6	1	3		2	1 Burroughs 2 Dawes Union	1 Mobile Co.High 2 Burroughs

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Hall Elem. 1-6 Spec. Ed.	20 1 21	2 0 2	18 1 19	2	1	1		1	1 Morningside	1 Maryvale
Hamilton Elem. 1-6	18	15	3	1	0	1	1	2	1 Owens	1 Baker 1 Title I Helping Tea.
Hillsdale Sec. 6-8 Spec. Ed.	26 1 27	15 0 15	11 1 12	2	1	0		3	1 Murphy 4 Scarborough 1 Azalea Road 1 K.J. Clark 1 Davidson 1 Alba 1 Prichard	3 Orchard 5 Will 3 Dickson 1 Prichard
Hollingers Island Elem. 1-6	11	10	1	3	1	1	1	2		1 Helping Tea. 3 St. Elmo
Howard Elem. 1-6	15	1	14	1	0	0		0	-	1 Hollingers Isl. 1 Dickson
Indian Springs Elem. 1-6	16	14	2	3	3	0		4	1 Semmes	1 Dodge 1 Davidson

School	No. Teachers Assigned 69-70	White	Non-White	Vacancies Occurred	Vacancies Filled White	Vacancies Filled Non-White	Present Vacancies	No. New Teachers	No. Transfers From...	No. Transfers To...
Elem. 1-5	19	17	2	5	2	0		3	-	3 Adams 1 Eight Mile 1 Shaw 1 Baker
Leinkauf Elem. 1-6	13	9	4	2	1	1		1	1 Grant	-
Rose Lott Elem. 1-5 Spec. Ed.	18 2 20	12 - 12	6 2 8	3	1			0	12 Citronelle 1 Belsaw 1 Mt. Vernon	13 Citronelle 1 Murphy 1 Trinity Gdns. 1 Blount
Maryvale Elem. 1-6 Spec. Ed.	18 2 20	15 0 15	3 2 5	3	2	1		1	1 Hall 1 Old Shell	-
ter Elem. 1-6	14	12	2	1	0	0		0	-	-
Mobile County High Sec. 7-12	30	24	6	3	2	1	2	8	1 Grand Bay 1 Theodore 2 St. Elmo 1 Burroughs	1 Craighead 1 Hillsdale 1 GrandBay 1 Murphy

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Mobile County Trng. Sec. 6-12 Spec. Ed.	50 2 52	6 0 6	44 2 46	3	3	0		1	1 Eanes 2 Clark 1 Vigor 1 Adams 6 Whitley	1 Davidson 1 Shaw 1 Satsuma
Montgomery Sec. 9-12	31	28	3	5	4	0	1	4	1 Semmes 1 Dunbar 1 Washington	1 Murphy
Morningside Elem. 1-5	23	22	1	4	3	0		4	1 Westlawn	1 Hall
Mt. Vernon Elem. 1-5	13	8	5	0	0	0		1	2 Citronelle 1 Saraland 5 Belsaw 1 Caldwell	1 Brazier 1 Belsaw
Murphy High Sec. 9-12 Spec. Ed.	110 3 113	100 2 102	10 1 11	12	8	2		8	1 Dunbar 1 Theodore 2 Blount 1 Lott 1 Montgomery 1 Semmes 1 Central 1 St. Elmo 1 Washington 1 Mobile Co. High 1 Williamson 1 Trinity Gardens	1 Dunbar 1 Principal - Calcedeaver 1 Washington 1 Title I Helping Tea. 1 Hillsdale

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(8) No. Transfers To...
Old Shell Road Elem. 1-6	11	9	2	0	0	0	0	0	-	1 Maryvale
Orchard Elem. 1-5	26	21	5	2	2	0	-	2	3 Hillsdale 1 Lee	1 A.Prin.-Adams
Owens Elem. 1-6 Spec. Ed.	34 2 36	2 2	32 2 34	3	0	0	-	2	-	1 Fonde 1 Hamilton 1 Brookley 1 Williams 1 Semmes
Palter Elem. 1-5 Spec. Ed.	21 1 22	2 2	19 1 20	2	0	0	-	1	1 Glendale	-
Phillips Sec. 7-8 Spec. Ed.	34 2 36	32 1 33	2 1 3	8	5	0	1	3	2 Rain 1 Clark 1 Dixon 1 Forest Hill	1 Woodcock
Richard Sec. 6-9 Elem. Ed.	20 1 21	16 1 17	4 0 4	1	1	0	1	1	1 Hillsdale 2 Adams	1 Hillsdale 1 Bienville

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
B. C. Rain Sec. 7-12	54	46	8	13	9	3	2	16	1 Clark 2 Scarborough 1 Central 1 Blount 1 Adams 1 Murphy 1 Montgomery 1 Vigor	2 Phillips 1 Williamson
Spec. Ed.	2	2	0							
	56	48	8							
obins Elem. 1-5	24	2	22	0			1	2	-	1 Shepard 2 Glendale
Saraland Elem. 1-5	21	19	2	3	1	-	-	1	-	1 Adams 1 Mt. Vernon
Satsuma Sec. 8-12	52	41	9	6	3	3	-	8	7 Adams 1 Calcedeaver 1 Mobile Co.Trng.	1 Helping Tea. 6 Adams 2 Davidson 1 Evans 1 Citronelle
Spec. Ed.	2	0	2							
	54	43	11							
Scarborough Sec. 6-8	29	27	2	6	3	0		4	-	4 Hillsdale 1 Stanton Road 1 Rain 1 Title I Helping Tea.

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(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
[illegible] (1-8)									1 Citronelle	1 Montgomery
Elem. 1-5	11	9	2	5	5	0	-	6	1 Tanner Wms.	1 Forest Hill
Sec. 6-8	25	23	2						1 Stanton Road	1 Scarborough
Spec. Ed.	2	1	1						1 Owens	1 Citronelle
	38	33	5							1 Murphy
										1 Azalea Road
										1 Indian Spring
Shaw										
Sec. 9-12	57	51	6	14	10	2	-	11	1 Baker	1 Vigor
									1 Lee	
									1 Toulminville	
									1 Williamson	
									1 St. Elmo	
									1 Murphy	
									1 Scarborough	
									1 Mobile Co. Trng	
									1 Hillsdale	
Shepard										
Elem. 1-6	14	12	2	2	1	0	-	0	1 Robbins	1 Burroughs
									1 Dawes-Union	
Stanton Road										
Elem. 1-6	30	2	28	4	0	1	-	1	1 Scarborough	1 Eight Mile
										1 Semmes
St. Elmo										
Sec. 7-8	19	10	9	4	2	0	1	5	4 Hollingers Isl.	1 Murphy
										3 Theodore
										3 Alba
										1 Vigor
										1 Shaw
										2 Mobile Co.High
										4 Eanes
										1 Craighead
										2 Azalea Road

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Tanner Williams Elem. 1-6	9	6	3	1	0	0	2	0	1 Chickasaw 1 Council	1 Semmes
Theodore Sec. 7-12	66	61	5	12	7	1	1	14	2 Eanes 3 St. Elmo 1 Satsuma	1 Trinity Gdns. 1 Dunbar 1 Toulminville 1 Mobile Co.High 1 Baker 1 Murphy 1 Davidson 1 Central
Spec. Ed.	2	1	1							
	68	62	6							
Thomas Elem. 1-6	10	7	3	0	0	0	-	0	-	-
Toulminville Sec. 10-12	42	6	36	3	3	0	1	4	1 Theodore 1 Vigor 1 Williamson	1 Vigor 1 Blount 1 Shaw 1 Grant
Spec. Ed.	1	0	1							
	43	6	37							
Trinity Gardens Sec. 7-12	42	4	38	6	0	4	-	4	2 Vigor 1 Azalea Road 1 Lott 1 Theodore	2 Vigor 1 Murphy
Spec. Ed.	1	1	0							
	43	5	38							

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Prefer. Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
Vigor Sec. 10-12	71	60	11	9	5	4	-	6	1 Shaw 1 Child Guidance 2 Trinity Gdns. 1 St. Elmo 1 Toulminville 2 Blount 1 Central 1 Washington	2 Trinity Gdns. 1 A.Princ.Baker 1 Mobile Co.Trn. 1 Eanes 1 A.Principal Davidson 1 Toulminville
Spec. Ed.	2	2	0							
	73	62	11							
[illegible] (Adults)	3	3	0	0	0	0	-	0	-	-
Washington Sec. 7-9	53	3	50	3	1	0	0	3	1 Murphy 1 Carver	1 Vigor 1 Murphy 1 Azalea Road
Spec. Ed.	1	0	1							
	54	3	51							
Whistler Elem. 1-6	16	13	3	3	2	0		1	1 Dodge 1 Lott	1 Morningside 1 Dixon
Whistler Sec. 1-6	13	11	2	2	0	1	-	1	-	1 Adams
Spec. Ed.	5	2	3							
	18	13	5							
Wicley Elem. 1-5	12	4	8	0	0	0	-	2	1 Glendale 1 Emerson	1 Chickasaw 1 Bienville 5 Mobile Co.Trng 1 Eight Mile
Spec. Ed.	1	0	1							
	13	4	9							

SUMMARY OF TEACHER ASSIGNMENTS AND VACANCIES -- MOBILE COUNTY PUBLIC SCHOOLS - 1969-70 - AS OF SEPTEMBER 24, 1969

(1) School	(2) No. Teachers Assigned 69-70	(3) White	(3) Non-White	(4) Vacancies Occurred	(5) Vacancies Filled White	(5) Vacancies Filled Non-White	(6) Present Vacancies	(7) No. New Teachers	(8) No. Transfers From...	(9) No. Transfers To...
John Will Elem. 1-5	24	17	7	0	0	0	1	0	5 Hilledale	1 Title I Helping Tea.
Adelia Williams Elem. 1-6	14	12	2	3	3	0	3	2	1 Council 1 Owens	-
Williamson Sec. 8-12 Spec. Ed.	42 1 43	3 1 4	39 0 39	5	1	2	-	4	1 Rain 1 Adams	1 Murphy 1 Shaw 1 Toulminville
Vilmer Elem. 1-6 Spec. Ed.	12 1 13	8 1 9	4 0 4	2	1	1	-	2	1 Owens 1 Brazier	1 Evans
Woodcock Elem. 1-6 Spec. Ed.	11 1 12	8 0 8	3 1 4	3	0	1	-	0	1 Phillips	1 Arlington
Child Guidance Spec. Ed.	17	15	2	3	2	1	-	10	-	1 Vigor 1 Dunbar

Opinion of Court of Appeals of December 1, 1969

No. 26285

DEREK JEROME SINGLETON, *et al.*,

Appellants,

—v.—

JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

No. 28349

BIRDIE MAE DAVIS, *et al.*,

Plaintiffs-Appellants,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

—v.—

BOARD OF SCHOOL COMMISSIONERS OF
MOBILE COUNTY, *et al.*,

Defendants-Appellees,

TWILA FRAZIER, *et al.*,

Defendants-Intervenor-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

[and other cases]

Opinion of Court of Appeals of December 1, 1969

Before:

BROWN, *Chief Judge,*
WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, MORGAN, CARSWELL, and CLARK, *Circuit Judges, en banc.**

PER CURIAM: These appeals, all involving school desegregation orders, are consolidated for opinion purposes. They involve, in the main, common questions of law and fact. They were heard *en banc* on successive days.

Following our determination to consider these cases *en banc,* the Supreme Court handed down its decision in *Alexander* v. *Holmes County Board of Education,* 1969, —— U.S. ——, 90 S.Ct. ——, 24 L.ed.2d 19. That decision supervened all existing authority to the contrary. It sent the doctrine of deliberate speed to its final resting place. 24 L.ed.2d at p. 21.

The rule of the case is to be found in the direction to this court to issue its order "effective immediately declaring that each of the school districts . . . may no longer operate a dual school system based on race or color, and directing that they begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color." We effectuated this rule and order in *United States* v. *Hinds County School Board,* 5 Cir., 1969, —— F.2d ——, [Nos. 28,030 and 28,042, slip opinion dated Nov. 7, 1969]. It must likewise be effectuated in these and all other school

* Judge Wisdom did not participate in Nos. 26285, 28261, 28045, 28350, 28349 and 28361. Judge Ainsworth did not participate in No. 28342. Judge Carswell did not participate in Nos. 27863 and 27983. Judge Clark did not participate in No. 26285.

cases now being or which are to be considered in this or the district courts of this circuit.

The tenor of the decision in *Alexander* v. *Holmes County* is to shift the burden from the standpoint of time for converting to unitary school systems. The shift is from a status of litigation to one of unitary operation pending litigation. The new modus operandi is to require immediate operation as unitary systems. Suggested modifications to unitary plans are not to delay implementation. Hearings on requested changes in unitary operating plans may be in order but no delay in conversion may ensue because of the need for modification or hearing.

In *Alexander* v. *Holmes County,* the court had unitary plans available for each of the school districts. In addition, this court, on remand, gave each district a limited time within which to offer its own plan. It was apparent there, as it is here, that converting to a unitary system involved basically the merger of faculty and staff students, transportation, services, athletic and other extra-curricular school activities. We required that the conversion to unitary systems in those districts take place not later than December 31, 1969. It was the earliest feasible date in the view of the court. *United States* v. *Hinds County, supra.* In three of the systems there (Hinds County, Holmes County and Meridian), because of particular logistical difficulties, the Office of Education (HEW) had recommended two step plans. The result was, and the court ordered, that the first step be implemented not later than December 31, 1969 and the other beginning with the fall 1970 school term.

I

Because of *Alexander* v. *Holmes County*, each of the cases here, as will be later discussed, must be considered anew, either in whole or in part, by the district courts. It happens that there are extant unitary plans for some of the school districts here, either Office of Education or school board originated. Some are operating under freedom of choice plans. In no one of the districts has a plan been submitted in light of the precedent of *Alexander* v. *Holmes County*. That case resolves all questions except as to mechanics. The school districts here may no longer operate dual systems and must begin immediately to operate as unitary systems. The focus of the mechanics question is on the accomplishment of the immediacy requirement laid down in *Alexander* v. *Holmes County*.

Despite the absence of plans, it will be possible to merge faculties and staff, transportation, services, athletics and other extra-curricular activities during the present school term. It will be difficult to arrange the merger of student bodies into unitary systems prior to the fall 1970 term in the absence of the merger plans. The court has concluded that two-step plans are to be implemented. One step must be accomplished not later than February 1, 1970 and it will include all steps necessary to conversion to a unitary system save the merger of student bodies into unitary systems. The student body merger will constitute the second step and must be accomplished not later than the beginning of the fall term 1970.[1] The district courts,

[1] Many faculty and staff members will be transferred under step one. It will be necessary for final grades to be entered and for other records to be completed, prior to the transfers, by the trans-

in the respective cases here, are directed to so order and to give first priority to effectuating this requirement.

To this end, the district courts are directed to require the respective school districts, appellees herein, to request the Office of Education (HEW) to prepare plans for the merger of the student bodies into unitary systems. These plans shall be filed with the district courts not later than January 6, 1970 together with such additional plan or modification of the Office of Education plan as the school district may wish to offer. The district court shall enter its final order not later than February 1, 1970 requiring and setting out the details of a plan designed to accomplish a unitary system of pupil attendance with the start of the fall 1970 school term. Such order may include a plan designed by the district court in the absence of the submission of an otherwise satisfactory plan. A copy of such plan as is approved shall be filed by the clerk of the district court with the clerk of this court.[2]

---

ferring faculty members and administrators for the partial school year involved. The interim period prior to February 1, 1970 is allowed for this purpose.

The interim period prior to the start of the fall 1970 school term is allowed for arranging the student transfers. Many students must transfer. Buildings will be put to new use. In some instances it may be necessary to transfer equipment, supplies or libraries. School bus routes must be reconstituted. The period allowed is at least adequate for the orderly accomplishment of the task.

[2] In formulating plans, nothing herein is intended to prevent the respective school districts or the district court from seeking the counsel and assistance of state departments of education, university schools of education or of others having expertise in the field of education.

It is also to be noted that many problems of a local nature are likely to arise in converting to and maintaining unitary systems.

The following provisions are being required as step one in the conversion process. The district courts are directed to make them a part of the orders to be entered and to also give first priority to implementation.

The respective school districts, appellees herein, must take the following action not later than February 1, 1970:

DESEGREGATION OF FACULTY AND OTHER STAFF

The School Board shall announce and implement the following policies:

1. Effective not later than February 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

These problems may best be resolved on the community level. The district courts should suggest the advisability of bi-racial advisory committees to school boards in those districts having no Negro school board members.

2. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

3. If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the school board will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee.

"Demotion" as used above includes any reassignment (1) under which the staff member receives less

pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

Majority to Minority Transfer Policy

The school district shall permit a student attending a school in which his race is in the majority to choose to attend another school, where space is available, and where his race is in the minority.

Transportation

The transportation system, in those school districts having transportation systems, shall be completely reexamined regularly by the superintendent, his staff, and the school board. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

School Construction and Site Selection

All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the recurrence of the dual school structure once this desegregation plan is implemented.

ATTENDANCE OUTSIDE SYSTEM OF RESIDENCE

If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system.

See *United States* v. *Hinds County, supra,* decided November 6, 1969. The orders there embrace these same requirements.

II

In addition to the foregoing requirements of general applicability, the order of the court which is peculiar to each of the specific cases being considered is as follows:

• • • • •

No. 28349—MOBILE COUNTY, ALABAMA

On June 3, 1969, we held that the attendance zone and freedom of choice method of student assignment used by the Mobile School Commissioners was constitutionally unacceptable. Pursuant to our mandate the district court requested the Office of Education (HEW) to collaborate with the board in the preparation of a plan to fully desegregate all public schools in Mobile County. Having failed to reach agreement with the board, the Office of Education filed its plan which the district court on August 1, 1969, adopted with slight modification (but which did not reduce the

amount of desegregation which will result). The court's order directs the board for the 1969-1970 school year to close two rural schools, establish attendance zones for the 25 other rural schools, make assignments based on those zones, restructure the Hillsdale School, assign all students in the western portion of the metropolitan area according to geographic attendance zones designed to desegregate all the schools in that part of the system, and reassign approximately 1,000 teachers and staff. Thus the district court's order of August 1, now before us on appeal by the plaintiffs, will fully desegregate all of Mobile County schools except the schools in the eastern portion of metropolitan Mobile where it was proposed by the plan to transport students to the western part of the city. The district court was not satisfied with this latter provision and required the board after further study and collaboration with HEW officials, to submit by December 1, 1969, a plan for the desegregation of the schools in the eastern part of the metropolitan area.

The school board urges reversal of the district court's order dealing with the grade organization of the Hillsdale School and the faculty provisions.

We affirm the order of the district court with directions to desegregate the eastern part of the metropolitan area of the Mobile County School System and to otherwise create a unitary system in compliance with the requirements of *Holmes County* and in accordance with the other provisions and conditions of this order.

• • • • •

III

In the event of an appeal or appeals to this court from an order entered as aforesaid in the district courts, such appeal shall be on the original record and the parties are encouraged to appeal on an agreed statement as is provided for in Rule 10(d), Federal Rules of Appellate Procedure (FRAP). Pursuant to Rule 2, FRAP, the provisions of Rule 4(a) as to the time for filing notice of appeal are suspended and it is ordered that any notice of appeal be filed within fifteen days of the date of entry of the order appealed from and notices of cross-appeal within five days thereafter. The provisions of Rule 11 are suspended and it is ordered that the record be transmitted to this court within fifteen days after filing of the notice of appeal. The provisions of Rule 31 are suspended to the extent that the brief of the appellant shall be filed within fifteen days after the date on which the record is filed and the brief of the appellee shall be filed within ten days after the date on which the brief of appellant is filed. No reply brief shall be filed except upon order of the court. The times set herein may be enlarged by the court upon good cause shown.

The mandate in each of the within matters shall issue forthwith. No stay will be granted pending petition for rehearing or application for certiorari.

REVERSED as to all save Mobile and St. John The Baptist Parish; AFFIRMED as to Mobile with direction; AFFIRMED in part and REVERSED in part as to St. John The Baptist Parish; REMANDED to the district courts for further proceedings consistent herewith.

Second HEW Report Filed December 1, 1969

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Regional Office

Room 526—Mail Room 404
50 Seventh Street, N.E.

December 1, 1969

Honorable Daniel H. Thomas
District Judge, U. S. District Court
for the Southern District of Alabama
Mobile, Alabama 36601

Dear Judge Thomas:

Enclosed please find six (6) copies of four (4) plans formulated by the U. S. Office of Education, Department of Health, Education, and Welfare, regarding the operation of schools in Metropolitan Mobile County Schools.

Sincerely,

ERNEST E. BUNCH
Ernest E. Bunch
Acting Senior Program Officer
Equal Educational Opportunities

Second HEW Report Filed December 1, 1969

A DESEGREGATION PLAN FOR THE MOBILE COUNTY SCHOOL SYSTEM

A REPORT TO THE SUPERINTENDENT

By the

DIVISION OF EQUAL EDUCATIONAL OPPORTUNITIES
U. S. OFFICE OF EDUCATION
Atlanta, Georgia 30323

Second HEW Report Filed December 1, 1969

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Regional Office

Room 526—Mail Room 404
50 Seventh Street, N.E.

December 1, 1969

Dr. Cranford H. Burns, Superintendent
Board of School Commissioners of Mobile County
Box 1327
Mobile, Alabama 36601

Dear Dr. Burns:

Enclosed are four (4) copies of four (4) plans referring to schools in the Metropolitan area of Mobile, Alabama.

Your attention is elicited for the purposes of review and action in terms of accomplishing the mandates of the Courts regarding the establishment of "just schools" for the pupil populations within your school district.

Each plan is self explanatory and flexible in terms of more precise sophistication that will achieve the objectives of the Court Orders.

Sincerely,

ERNEST E. BUNCH
Ernest E. Bunch
Acting Senior Program Officer
Equal Educational Opportunities

Second HEW Report Filed December 1, 1969

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Second HEW Report Filed December 1, 1969

MOBILE COUNTY, ALABAMA
METROPOLITAN SCHOOLS

The following plans regarding the educational system of Metropolitan Mobile is exhibited as approaches to solutions to problems occasioned by or incident to the desegregation of these schools.

In the main there are four plans presented. Each of these plans differ in substance or degree, and in many instances in both substance and degree. However, all of the plans are based upon educational concepts promulgated either recently or not so recently.

For purposes of identification the plans contained in this report are exhibited as follows:

Plan A

Plan B

Plan B—Alternative

Plan B—I—Alternative

These plans are presented for the most part in statistical exhibit that may be utilized for comparative purposes. Each plan uses the major variables necessary for this type analysis, i.e., Name of school, grades, capacity of schools, student population in a given school(s). The statistics used in all four (4) of the plans are based in the main on the Department of Health, Education, and Welfare's Report to the Superintendent of Mobile County's Schools, July, 1968. Consequently, these statistics may or may not agree with current figures of the Board of Education. However, they may be considered as relative close approximates that could be used as a guide for a more precise sophistication in this vein.

Second HEW Report Filed December 1, 1969

PLAN A

MOBILE COUNTY, ALABAMA

PLAN A

Elementary, Senior High, and Junior High-Middle Schools

This plan shows all existing school buildings of record, the grade structure within each school, the permanent capacity, and where available, the capacity with the use of portables, student breakdown, by race, and the number of portable units located at each school site.

Second HEW Report Filed December 1, 1969

(See opposite) ☞

DATE: _____

Elementary Schools (1)

-A-

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
South Brockley	1-6	442		514	72	586				5 Portables
Morningside	1-6	578		756	0	756				6 Portables
Williams	1-6	408		513	43	556				5 Portables
Maryvale	1-6	612		588	30	618				2 Portables
Mertz	1-6	510		482	0	482				
Westlawn	1-6	510		595	0	595				3 Portables
Woodcock	1-6	612		380	80	460				
Hall	1-6	1224		3	701	704				
Arlington	1-5	476		384	153	537				2 Portables
Council	1-5	578		0	560	560				
Emerson	1-6	442		3	518	521				4 Portables
Weinkauf	1-6	442		323	125	449				
Owens	1-6	1496		0	1254	1254				
Caldwell	1-6	578		1	401	402				

COMPOSITE BUILDING INFORMATION FORM

DATE: _____

A

Elementary (Contd)[2]

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Howard	1-6	408		0	465	465				3 Portables
Old Shell Road	1-6	476		282	130	412				
Crichton	1-6	782		520	253	773				1 Portable
Stanton Road	1-6	1020		3	1077	1086				3 Portables
Fonnielle	1-6	1190		0	1191	1191				2 Portables
Gorgas	1-6	884		1	1138	1139				8 Portables
Palmer	1-5	578		52	688	740				6 Portables
Glendale	1-6	680		549	172	721				1 Portable
Whitley	1-5	617		0	421	421				1 Portabl
Brazier	1-6	1156		0	1197	1197				1 Portable
Grant	1-5	1292		3	1300	1303				3 Portables
Robbins	1-5	850		2	805	807				
Bienville	1-6	612		[illegible]	[illegible]	[illegible]				1 Portable

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Date:

- A -

Elementary (Cont'd.)[3]

Name of School	Grades	Capacity Perm.	Capacity V. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Chickasaw	1-6	612		0	563	563				
Shepard	1-6	544		453	43	496				
Dodge	1-6	816		678	54	732				
Fonde	1-6	850		715	11	726				
Austin	1-6	408		391	22	413				
Dickson	1-6	816		772	1	773				
Hillsdale	1-6	510		0	586	586				4 Portables
Orchard	1-5	816		750	2	761				
Will	1-5	816		678	0	678				
Forest Hill	1-5	578		604	0	604				1 Portable
Whistler	1-6	650		251	247	498				
Thomas	1-6	272		210	114	324				3 Portables
Indian Springs	1-6	408		535	11	546				V Portables
Eight Mile	1-6	340		344	78	422				
Totals:		78560		W 586	N 256	28,142				

COMPOSITE BUILDING INFORMATION FORM

-A-

DATE:

Jr. high - Middle Schools

Name of School	Grades	Capacity Perm.	Capacity No. Portables	Students W	Students B	Students T	Staff W	Staff N	Staff T	Comments
Rain	7-8	476		415	38	453				1
Eanes	7-9	1148		982	57	1039				
Craighead	6-7	728		153	394	547				
Phillips	7-8	980		838	113	951				
Dunbar	7-8	1064		5	928	933				
Washington	7-9	1015		0	1493	1493				15 Portables
Mobile County Jr.	6-8	560		0	568	568				4 Portables
Richard	6-9	616		387	163	550				
Career	6-7	784		0	881	881				4 Portables
Trinity Gardens	7-8	392		0	420	420				7 Portables
Clark	7-9	1392		1317	239	1556				
Azalea Road	7-8	1015		1044	40	1084				5 Portables
Hillsdale	7-9	336		0	225	225				
Scarborough	6-8	928		1042	1	1040				
Eight Mile	7-8	252		204	30	234				

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A

Sr. High Schools

Name of School	Grades	Capacity Perm.	Capacity T. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Rain	9-12	748		760	49	809				0
Williamson	8-12	1334		3	1131	1134				
Murphy	9-12	2900		2707	147	2854				
Central	9-12	1566		0	1614	1614				2 Ports.
Toulminville	10-12	638		0	1107	1107				15 Ports
Mobile County Training	9-12	700		0	710	710				
Blount	8-12	2001		0	1894	1894				
Vigor	10-12	1740		1564	109	1673				
Trinity Gardens	9-12	476		0	637	637				
Davidson	9-12	1943		2299	66	2355				15 Ports
Shaw	9-12	928		1136	196	1332				16 Ports
Total: S. H.		14674		8459	7660	16119				48 Portables

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PLAN B

MOBILE COUNTY, ALABAMA

PLAN B

Senior High Schools

This plan exhibits three organizational grade structures for the schools within this category, i.e., 9-12, 10-12, and 12 in addition to items of analysis as hereinto referred. It also provides for the following:

1. combining two school centers,

2. changing two (2) former high schools to junior high-middle schools,

3. establishing one (1) 12 grade school and transporting the remaining 9-11 students to contigiously zoned schools, and,

4. setting geographic attendance zones for each school center.

Junior High—Middle Schools

This category under this plan suggests basically the following:

1. geographic zones for identified schools with the variables aforementioned,

2. organizational grade structures of 7-8; 6-9; 6-7, and two (2) grade 8 schools,

3. deploying three (3) school structures differently than formerly used, and

4. combining three (3) sets of schools for utilization as single school centers for each set.

Elementary Schools

This category of schools are exhibited in addition to the constants encouched as referred to above with the following apparent factors present:

1. the closing of three (3) schools,

2. organizing grades on a 1-6; 1-5 basis,

3. deploying three (3) schools differently than formerly,

4. involving one-way transporting of black students from two (2) areas to nine (9) formerly all-white or near all-white attendance centers, and,

5. pairing of three (3) sets of schools.

Second HEW Report Filed December 1, 1969

(See opposite) ☞

DATE:

Elementary (Cont'd)

Name of School	Grades	Capacity Permanent	Capacity Portables	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Clickerman	1-5	612		473	100	573				
Shepard	1-5	544		383	160	543				
Dodge	1-5	816		565	45	610				
Fonde	1-5	850		605	236	841				
Austin	1-5	408		331	84	415				
Dickson	1-5	816		680	125	805				
Hillsdale	— Changed: Sec. & high Schools #13									
Orchard	1-5	816	876	759	117	876				2 Portables
Will	1-5	816	1086	678	395	1073				9 Portables
Forest Hill	1-5	578	938	586	355	941				12 Portables
Whistler	1-5	680		181	205	386				
Thomas	1-5	272		180	95	275				
Indian Springs	1-6	408	538	535	11	546				4 Portables
Eight Mile	1-6	340		280	66	346				

COMPOSITE BUILDING INFORMATION FORM

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-B-

Jr high - Middle Schools

Name of School	Grades	Capacity Perm.	Capacity M. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Rain	7-9	476		415	38	453				
Banes-Woodcock	6-9	1760		980	764	1744				
Craighead	— See Senior High Schools —									
Phillips-Washington-Fonvielle	6-9	2775		1040	1562	2602				
Dunbar-Central	6-9	2630		1044	1562	2606				
Washington — See #4 Above —										
Mobile Co. Training	6-7	1260		432	859	1291				1 Portable
Richard	6-7	616		240	410	650				1 Portable
Carver — See Vigor-Bienville; Carver-Blount — High School										
Trinity Gardens	6-7	868		390	690	1076				7 Portables
Clark	8	1392		536	948	1474				4 Portables
Azalea Road	6-7	1015		857	133	990				
Hillsdale	8	844		858	131	989				
Scarborough	6-7	984		555	133	958				

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COMPOSITE BUILDING INFORMATION FORM

-B-

DATE: _____

Elementary

Name of School	Grades	Capacity Perm.	Capacity W. Portes.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
South Bartley	1-6	442	592	514	72	586				5 Portables
Morningside	1-5	578	758	636	120	756				6 Portables
Williams	1-6	409	618	571	43	614				7 Portables
Maynale	1-5	612	672	472	145	617				2 Portables
MERTZ	1-5	510		402	120	522				
Westhaven	1-5	540	590	495	75	570				3 Portables
Wadereek	— See Junior high Schools #2 —									
HALL	1-5	1224		483	664	1147				
Arlington Council	1-5	1054	1110	350	659	1009				2 Portables
EMERSON	— Closed —									
Heinkauf	1-5	442		273	165	438				
OWENS	1-5	1496		2	1414	1416				
Caldwell	— Closed —									

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Second HEW Report Filed December 1, 1969

(a)

COMPOSITE BUILDING INFORMATION FORM

DATE: _____

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Elementary (Contd)²

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Howard		Closed								
Old Shell Road	1-5	476	536	232	295	527				2 Portables
Crichton	1-5	782	820	438	348	786				1 Portable
Stanton Road	1-5	1020	1050	6	900	906				1 Portable
Fonvielle		Changed — See Jr High Schools # 4								
Gorgas	1-5	884	1034	7	963	970				5 Portables
Palmer-Glendale	1-5	1258	1408	434	931	1365				4 Portables
Whitley	1-5	612	702	216	481	697				3 Portables
Brazier	1-5	1156	1186	10	1022	1032				1 Portable
Grant	1-5	1292	1392	15	1285	1300				3 Portables
Robbins-Hamilton	1-5	1496		638	855	1493				
Bienville		[illegible]								

COMPOSITE BUILDING INFORMATION FORM

- B -

DATE: _____

So. High Schools

Name of School	Grades	Capacity Perm.	Capacity T. Portx.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Rain	9-12	448	812	735	59	794				13 Portables
Williamson-Creighton	10-12	2062		1009	767	1775				
Murphy	10-12	2900		1440	1360	2800				
CENTRAL	— See Jr. high Schools —									
Coalmountville	12	638		0	365	365				
Mobile County Tr.	— See Jr. high Schools —									
(Blount Vigor)	9-12	5101		1908	2962	4870				
Trinity Gardens	— See Jr high Schools —									
DAVIDSON	9-12	1943	2146	1739	604	2342				3 Portables
Shaw	9-12	928		1150	471	1621				
[illegible]		12070		[illegible]	6588	12567				

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PLAN B—ALTERNATIVE

MOBILE COUNTY, ALABAMA

PLAN B—ALTERNATIVE

Senior High Schools

This plan differs from PLAN B in the following manner:

1. it does not involve school attendance of pupils out of the present geographic zones, and
2. Toulminville, Trinity, Gardens, and Mobile County Training Schools are not included to serve senior high school students.

Junior High—Middle Schools

This category of schools under this plan provides basically for the following as compared to PLAN B for this grade levels:

1. utilizing the Toulminville School in the set (as exhibited) in lieu of Fonvielle School.

Elementary Schools

The schools contained in this category as under this plan as opposed to PLAN B suggests the following:

1. students attend prescribed geographic zones,
2. black students who were transported from two (2) areas within the Eastern section of the beltline area are assigned to nearby and schools that were *closed* or *redeployed* as indicated in PLAN B. (Reference to Toulminville and Emerson-Caldwell-Howard areas.)

COMPOSITE BUILDING INFORMATION FORM

Date: 1

B - Alternative

Elementary Schools

Name of School	Grades	Capacity Perm.	Capacity H. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
So. Brackley	1-6	442	592	514	72	586				5 Portables
Meridingside	1-5	578		756	0	756				6 Portables
Williams	1-6	408		571	43	614				5 Portables
Maryvale	1-5	612		588	30	618				2 Portables
MERTZ	1-5	510		482	0	482				
Westlawn	1-5	510		595	0	595				3 Portables
Woodcock		SEE	Junior	high	Schools					
HALL	1-5	1224		483	664	1147				
Arlington Council	1-5	1054		350	659	1009				2 Portables
Emerson	1-5	442		3	518	521				4 Portables
Heinkauf	1-5	442		273	165	438				
OWENS	1-5	1496		2	1414	1416				
Caldwell	1-5	578		1	401	402				

COMPOSITE BUILDING INFORMATION FORM

B - Alternative

DATE: _____

Elementary Schools 2

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Howard	1-5	408		0	465	465				3 Portables
Old Shell Road	1-5	476		232	295	527				2 Portables
Crichton	1-5	782	820	438	348	786				1 Portable
Stanton Road	1-5	1020	1050	6	900	906				1 Portable
Fonvielle	1-5	1190		0	1000	1000				2 Portables
Gorgas	1-5	834		3	963	966				8 Portables
Palmer / Glendale	1-5	865		434	931	1365				7 Portables
Whitley	1-5	612	702	216	481	697				3 Portable
Brazier	1-5	1156	1186	10	1022	1032				1 Portable
Grant	1-5	1292	1382	15	1285	1300				3 Portables
Robbins / Hamilton	1-5	1496		635	855	1493				
Bienville		See Vigo - Bienville; Cocoa Blount - High School								

B - Alternative

Second HEW Report Filed December 1, 1969

Elementary Schools 2

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Chickasaw	1-5	612		473	100	573				
Shepard	1-5	544		453	43	496				
Dodge	1-5	816		565	45	610				
Fonde	1-5	850		715	11	726				
Austin	1-5	408		391	22	413				
Dickson	1-5	816		680	125	805				
Hillsdale		SEE		Jr. high Schools						
Orchard	1-5	816	876	759	117	876				2 Portables
Will	1-5	816	1086	678	0	678				9 Portables
Forest Hill	1-5	578	938	604	0	604				12 Portables
Whistler	1-5	680		181	205	386				
Thomas	1-5	272		180	95	275				
Indian Springs	1-6	408	538	535	11	546				4 Portables
Eight Mile	1-6	340		280	66	346				
Total		[illegible]33		13,104	13,351	26,455				

COMPOSITE BUILDING INFORMATION FORM (1)

B- Alternative

Date:

Jr high- Middle Schools

Name of School	Grades	Capacity Perm.	Capacity P. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Rain	7-8	476		415	38	453				
Eanes-Westcreek	6-9	1760		980	764	1744				
Craighead	See Senior high Schools									
Phillips										
Washington										
Tolmin ville	6-9	2775		1040	1562	2602				
Dunbar										
CENTRAL	6-9	2630		1092	1562	2602				
Washington	See Above									
Mobile Co Tr.	6-7	1260		432	859	1291				1 Portable
Brickwood	6-7	616		240	410	650				1 Portable
CAREER	See Vigor-Bienville, Career- Blount- high School									
Trinity Gardens	6-7	868		380	690	1070				7 Portables

Second HEW Report Filed December 1, 1969

COMPOSITE BUILDING INFORMATION FORM (2)

B- Alternative

DATE: Jr high - Middle Schools

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Azalea Road	6-7	1015		857	133	990				
Hillsdale	8	844		858	131	989				
Scarborough	6-7	984		855	133	988				
Eight Mile	7-8	252		270	42	312				2 Portables
Total	Sr. Hi	13382		7979	6507	14441				
Total	J. Hi	14,872		7907	7272	15179				
Totals:	Secondary	28,254		15,886	13,774	29,660				

COMPOSITE BUILDING INFORMATION FORM

B-ALTERNATIVE

DATE: _____

Sr High Schools

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Rain	9-12	448	812	735	59	794				13 Portables
Williamson-Craighead	10-12	2062		1008	767	1775				
Murphy	10-12	2900		1440	1913	3353				
CENTRAL	SEE	Junior high Schools								
Toulminville	SEE	Junior high Schools								
Mobile To. Tr.	SEE	Junior high Schools								
Blount										
Vigor	9-12	5101		1906	3516	5422				
Trinity Gardens	SEE	Junior high Schools								
Davidson	9-12	1943	2146	1733	51	1789				
Shaw	9-12	928		1150	196	1346				
Totals: Sr High		13,382		7979	6502	14481				

Second HEW Report Filed December 1, 1969

PLAN B-1 ALTERNATIVE

MOBILE COUNTY, ALABAMA

PLAN B-1 ALTERNATIVE

This plan is based primarily upon the concept of non-contigious pairing of schools. These schools are located, for the most part, in areas geographically, economically, and possibly culturally opposite each other. It takes into consideration such factors as the following:

1. pernament capacities of schools,
2. capacities of schools with portable units,
3. access to thoroughfares from one center to the other,
4. distances travelled,
5. suitability of facilities,
6. populations concentration,
7. non-utilization of undesirable school sites and buildings,
8. convenience,
9. utilization of the public school transportation network,
10. assignment of smaller children into schools with the fewer students enrolled,
11. a suggested grade level organization for all elementary children, and,
12. utilization of schools without regard to race.

Second HEW Report Filed December 1, 1969

(See opposite) ☞

MOBILE COUNTY, ALABAMA SCHOOL DISTRICT

DATE: PLAN B - 1 - ALTERNATIVE

ELEMENTARY SCHOOLS

Name of School	Grades	Capacity Perm.	Capacity W. Forts.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Fonvielle	3-5	1190		400	666	1066				
Forest Hill	1-2	578		204	334	538				
Lienkauf	5	442		410	110	520				
Westlawn	1-2	510		711	277	988				
Hertz	3-4	510		711	278	989				
Hall	1-3	1224		691	458	1149				
Maryvale	4-5	612		380	236	616				
Arlington-Council	3-5	1054		737	437	1174				
Morningside	1-2	578		369	222	591				
Austin	4-5	408		311	139	450				
Old Shell Road	1-3	476		312	178	490				
Crichton	3-5	782		481	241	722				
Shepard	1-2	544		410	150	560				
Caldwell	1-3	578		291	255	546				
South Brookley	4-5	442		224	218	442				

COMPOSITE BUILDING INFORMATION FORM

DATE: PLAN B-I-Alternative (2)

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Eight Mile	1-2	340		98	250	348				
Grant	3-5	12900		197	1101	1298				
Indian Springs	1-2	408		190	221	411				
Brazier	3-5	1156		355	812	1167				
Robbins-Hamilton	3-5	1496		800	693	1493				
Chickasaw	1-2	612		311	262	573				
Orchard	4-5	816		313	639	952				
Gorgas	1-3	884		449	441	890				
Stanton Road	3-5	1020		491	491	982				
Dickson	1-2	816		195	534	729				
Dodge	1-2	816		351	506	857				
Williams	3	408		303	225	528				
Owens	4-6	1496		484	1100	1584				

Re: (1) PLAN B-1-Alternative (3)

Name of School	Grades	Capacity Perm.	Capacity Port.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Emerson	CLOSE									
Palmer-Glendale	3-5	1238		634	717	1351				
Fonde	1-2	850		405	450	885				
Thomas	1-2	272		123	235	358				
Whitley	3-5	512		273	341	614				
Will	3-5	816		397	422	819				
Whistler	1-2	650		462	178	640				
Howard	CLOSE									

School Board Plan Filed December 1, 1969

In compliance with the orders and instructions to the School Board contained in this Court's Decree of August 1, 1969, the School Board now files its suggested desegregation plan for all of the metropolitan schools located east of I-65, for implementation for the 1970-71 school term.

As it has done on several occasions in the past, the School Board would once again respectfully call to the attention of the Court its sincere and considered opinion that the best plan for the operation and desegregation of the Mobile County Public School System—the plan that will preserve to all students of the system and all citizens of the county, black and white alike, their constitutional rights, and at the same time is the most educationally sound and administratively feasible—is a plan providing for a method of student assignment based upon free choice of schools by all.

Having once again called this to the Courts' attention, the School Board is nevertheless compelled by the orders of the Court to submit a suggested plan of student assignment based upon geographic zones rather than freedom of choice. Under such duress the School Board, against its sincere and considered best judgment and contrary to the personal wishes and desires of each member of the Board, now submits such a suggested plan. There are attached hereto three maps representing the suggested plan: one labeled "Metropolitan Attendance Areas, Elementary" (Map #1); one labeled "Metropolitan Attendance Areas, Middle Schools" (Map #2); and one labeled "Metropolitan Attendance Areas, Senior High" (Map #3). In arriving at the suggested plan for the schools east of I-65, it has been necessary to suggest several changes with regard to schools

west of I-65 in order to accommodate and fit with that which is suggested for east of I-65. For the sake of convenience and clarity the attached maps reflect the entire metropolitan portion of the school system, not just that part of it east of I-65, and the desegregation plan for the entire metropolitan portion of the school system.

In addition, these maps also reflect a suggested change in the composition of the Dickson, Will, Orchard, Hillsdale and Scarborough attendance areas essentially unassociated with the suggestions relating to east of I-65.

The maps are prepared in a manner familiar to the Court. The basic maps are official "City of Mobile" maps produced by the City Engineering Department. Attendance area boundaries are superimposed in heavy, dark lines. The locations of schools are shown as dark dots or circles. The names of the schools (and thus of the attendance areas) are written in, as are the grades to be accommodated in each school.

[Maps omitted—see original record.]

District Court Order of December 4, 1969

It appearing to the Court that of the three maps filed on December 1, 1969 by the defendant Board of School Commissioners with its Suggested Desegregation plan for all metropolitan schools located east of I-65, for implementation for the 1970-71 school term, that the elementary attendance area map (Map #1) contains a minor error in a drawn line which was inadvertently made and has just been detected, it is now

ORDERED and ADJUDGED by the Court that the defendant Board of School Commissioners is hereby allowed to substitute for the original Map #1, a corrected map showing the proposed elementary attendance area, which will now be designated as Map #1-A and attached to the original Suggested Desegregation plan, filed on December 1, 1969.

Done at Mobile, Alabama this 4th day of December, 1969.

/s/ DANIEL H. THOMAS
Daniel H. Thomas
Chief Judge

[Map omitted—see original record.]

Plaintiffs' Motion to Require Service of Desegregation Plan Filed January 2, 1970

Plaintiffs, Birdie Mae Davis, et al., move this Court for an order requiring the defendant School Board to serve on all opposing counsel a copy of the maps attached to the School Desegregation Plan filed on December 1, 1969 and a copy of any amendatory maps filed subsequently. In support of this motion plaintiffs show the following:

1. The School Board's failure to serve all opposing counsel inevitably delays our response to the December 1, 1969 plan;

2. The School Board's failure to serve all opposing counsel violates the December 13, 1969 Order of Justice Hugo Black, which Order required the School Board "to take no steps which are inconsistent with or will tend to prejudice or delay full implementation of complete desegregation on or before February 1, 1970". Delay in serving opposing counsel is a step which prejudices full implementation of complete desegregation by February 1, 1970.

3. Plaintiffs have written to counsel for the School Board and requested copies of the maps attached to the December 1, 1969 plan, but counsel for the School Board has not responded.

Plaintiffs request that the Court act promptly on this motion.

Statistical Exhibits Submitted by the United States to the District Court on January 27, 1970

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PROJECTED ENROLLMENT CHANGES
BETWEEN 1969 AND 1970

ELEMENTARY SCHOOLS

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.[1]
South Brookley Cap. 429	W	499 (1-6)	502 (1-6)	514 (1-6)	514 (1-6)	224 (4-5) (Caldwell 1-3)
	N	75	71	72	72	218 Tot. Cap. 1023
Morningside Cap. 561	W	740 (1-6)	631 (1-5)	636 (1-5)	636 (1-5)	369 (1-2) (Arlington-Council 3-5)
	N	0	0	120	0	222 Tot. Cap. 1584
Williams Cap. 396	W	497 (1-6)	571 (1-6)	571 (1-6)	571 (1-6)	303 (3) (Dodge 1-2, Owens 4-6)
	N	60	43	43	43	225 Tot. Cap. 2674
Maryvale Cap. 594	W	548 (1-6)	478 (1-5)	472 (1-5)	472 (1-5)	380 (4-5) (Hall 1-3)
	N	55	130	145	15	236 Tot. Cap. 1782
Mertz Cap. 528	W	461 (1-6)	496 (1-5)	402 (1-5)	402 (1-5)	402 (3-4) (Westlawn 1-2, Lienkauf 5)
	N	0	0	120	0	" Tot. Cap. 1551
Westlawn Cap. 528	W	516 (1-6)	483 (1-6)	495 (1-5)	495 (1-5)	495 (1-2) (Mertz 3-4, Lienkauf 5)
	N	0	0	75	0	" Tot. Cap. 1551

1/ Under this plan two or more schools are paired in order to house one group of elementary students. This column indicates the particular grades suggested for the school, the schools which are to be included in the pairing, and the total capacity of the buildings. Where more than one school is to be used for the one group of grades, the school other than the one in the left hand column will not be within parenthesis.

School			1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Woodcock Cap. 594	W	(1-6)	239	(1-5) 249	CONVERTED TO MIDDLE SCHOOL AS PART OF EANES		
	N		119	170			
Hall Cap. 1188	W	(1-6)	0	CONVERTED TO MIDDLE SCHOOL	(1-5) 483	(1-5) 483	(1-3) 691 (Maryvale 4-5)
	N		686		664	664	458 Tot. Cap. 1782
Arlington Cap. 462	W	(1-5)	307	CLOSE	(1-5) 2/ 350	(1-5) 350	(3-5) 737 (Morningside 1-2)
	N		237		Council 659	Council 659	437 Tot. Cap. 1584
Council Cap. 561	W	(1-5)	0	(1-5) 6	(1-5) 3/ 350	(1-5) 350	(3-5) 737 (Morningside 1-2)
	N		481	525	Arl. 659	659	Arl. 437 Tot. Cap. 1584
Emerson (Southside) 4/ Cap. 696	W	(1-6)	4	(1-6) 16	CLOSE	(1-5) 3	CLOSE
	N		354	340		518	

2/ The total capacity for the Arlington-Council facilities is 1023.

3/ Ibid.

4/ The Emerson School building was apparently abandoned sometime during the 1969-70 school year and the children were moved to the old Southside Junior High School which the Board had closed in 1968 because of its condition. The capacity figure used for Emerson is the listed capacity for the Southside plant. The capacity of the Emerson School when it was used was 528.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Lienkauf Cap. 495	W	268	258	273	273	~~410~~ 273
		(1-6)	(1-5)	(1-5)	(1-5)	(5) (Westlawn 1-2, Mertz 3-4)
	N	177	96	165	165	~~110~~ 55 Tot. Cap. 1551
Owens Cap. 1485	W	0	0	2	2	484
		(1-6)	(1-6)	(1-5)	(1-5)	(4-6) (Dodge 1-2, Williams 3)
	N	1100	1237	1414	1414	1100 Tot. Cap. 2674
Caldwell Cap. 594	W	0	13		1	291
		(1-6)	(1-6)	CLOSE	(1-5)	(1-3) (South Brookley 4-5)
	N	314	401		404	255 Tot. Cap. 1023
Howard Cap. 429	W	0	21		0	
		(1-6)	(1-6)	CLOSE	(1-5)	CLOSE
Old Shell Road Cap. 495	W	249	250	232	232	312
		(1-6)	(1-6)	(1-5)	(1-5)	(1-3) (Austin 4-5)
	N	112	120	295	295	178 Tot. Cap. 891
Crichton Cap. 759	W	507	518	438	438	481
		(1-6)	(1-6)	(1-5)	(1-5)	(3-5) (Shepard 1-2)
	N	237	243	348	348	241 Tot. Cap. 1287
Stanton Road Cap. 990	W	0	14	6	6	491
		(1-6)	(1-6)	(1-5)	(1-5)	(3-5) (Dickson 1-2)
	N	977	1077	900	900	491 Tot. Cap. 1717
Fonvielle Cap. 1155	W	0	8	CONVERTED TO MIDDLE SCHOOL	0	400
		(1-6)	(1-6)		(1-5)	(3-5) (Forest Hill 1-2)
	N	1209	1153		1000	666 Tot. Cap. 1815

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Gorgas Cap. 850	W	(1-6) 2	(1-6) 8	(1-5) 7	(1-5) 3	449
	N	1153	1150	963	963	(1-3) (Orchard 4-5) 441 Tot. Cap. 1597
Palmer Cap. 594	W	(1-5) 57	(1-5) 60	(1-5) 5/ 434	(1-5) 434	634
	N	674	660	Glen. 931	Glen. 931	(3-5) (Fonde 1-2) Glen. 717 Tot. Cap. 2112
Glendale Cap. 693	W	(1-6) 508	(1-5) 444	(1-5) 6/ 434	(1-5) 434	634
	N	149	206	Palmer 931	Palmer 931	(3-5) (Fonde 1-2) Palmer 717 Tot. Cap. 2112
Whitley Cap. 594	W	(1-5) 0	(1-5) 0	(1-5) 216	(1-5) 216	273
	N	395	420	481	481	(3-5) (Thomas 1-2) 341 Tot. Cap. 891
Brazier Cap. 1122	W	(1-6) 0	(1-5) 0	(1-5) 10	(1-5) 10	355
	N	1123	983	1022	1022	(3-5) (Ind. Springs 1-2) 812 Tot. Cap. 1551
Grant Cap. 1188	W	(1-5) 1	(1-5) 15	(1-5) 15	(1-5) 15	197
	N	1274	1250	1285	1285	(3-5) (Eight Mile 1-2) 1101 Tot. Cap. 1848
Robbins Cap. 825	W	(1-5) 6	(1-5) 2	(1-5) 7/ 638	(1-5) 638	800
	N	815	805	Hamilton 855	Hamilton 855	(3-5) (Chickasaw 1-2) Hamilton 693 Tot. Cap. 2112

5/ The total capacity for the Palmer-Glendale facilities is 1287.

6/ Ibid.

7/ The total capacity for the Robbins-Hamilton facilities is 1485.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Hamilton Cap. 600	W	629 (1-6)	625 (1-6)	638 (1-5) 8/	638 (1-5)	800 (3-5) (Chickasaw 1-2)
	N	0	0	855 Robbins	855 Robbins	693 Tot. Cap. 2112
Bienville Cap. 660	W	262 (1-6)	300 (1-6)	CONVERTED TO HIGH SCHOOL		
	N	299	313			
Chickasaw Cap. 627	W	494 (1-6)	500 (1-6)	473 (1-5)	473 (1-5)	311 (1-2) (Robbins-Hamilton 3-5)
	N	3	0	100	100	662 Tot. Cap. 2112
Shepard Cap. 528	W	409 (1-6)	---------- 9/	383 (1-5)	(1-5)	410 (1-2) (Crichton 3-5)
	N	29		160	43	150 Tot. Cap. 1287
Dodge Cap. 793	W	675 (1-6)	----------	565 (1-5)	565 (1-5)	351 (1-2) (Williams 3, Owens 1-2)
	N	65		45	45	506 Tot. Cap. 2674
Austin Cap. 396	W	396 (1-6)	----------	331 (1-5)	331 (1-5)	311 (4-5) (Old Shell Road 1-3)
	N	22		84	22	139 Tot. Cap. 891
Fonde Cap. 825	W	679 (1-6)	----------	605 (1-5)	605 (1-5)	405 (1-2) (Palmer-Glendale 3-5)
	N	11		236	11	450 Tot. Cap. 2112

8/ Ibid.

9/ The Board's plan does not propose any change in the elementary and middle schools located west of I-65 and no enrollment projection statistics are available for those schools.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Dickson Cap. 742	W	835	---------	680	680	195
	(1-6)			(1-5)	(1-5)	(1-2) (Stanton Road 3-5)
	N	193		125	125	534 Tot. Cap. 1714
Orchard Cap. 792	W	754	---------	~~660~~ 756	~~660~~ 756	313
	(1-5)			(1-5)	(1-5)	(4-5) (Gorgas 1-3)
	N	113		125	117	639 Tot. Cap. 1815
Will Cap. 792	W	657	---------	678	678	397
	(1-5)			(1-5)	(1-5)	(3-5) (Whistler 1-2)
	N	175		395	355	422 Tot. Cap. 1518
Forest Hill Cap. 660	W	560	---------	586	586	204
	(1-5)			(1-5)	(1-5)	(1-2) (Fonvielle 3-5)
	N	0		355	0	334 Tot. Cap. 1815
Whistler Cap. 726	W	227	---------	181	181	462
	(1-6)			(1-5)	(1-5)	(1-2) (Will 3-5)
	N	231		205	205	178 Tot. Cap. 1518
Thomas Cap. 297	W	222	---------	180	180	123
	(1-6)			(1-5)	(1-5)	(1-2) (Whitley 3-5)
	N	101		95	95	235 Tot. Cap. 891
Indian Springs Cap. 429	W	520	---------	535	535	190
	(1-6)			(1-6)	(1-6)	(1-2) (Brazier 3-5)
	N	12		11	11	221 Tot. Cap. 1551
Eight Mile Cap. 660	W	586	---------	280	280	98
	(1-8)			(1-6)	(1-6)	(1-2) (Grant 3-5)
	N	110		66	66	250 Tot. Cap. 1848

MIDDLE SCHOOLS

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Rain Cap. 986	W	1296 (7-12)	1150 (7-12)	1150 (7-12)	1150 (7-12)	---------- 10/
Eanes Cap. 1218	W	966 (7-9)	911 (6-8)	980 (6-8)	980 (6-9) 11/	----------
	N	134	160	Woodcock 764	Woodcock 764	
Woodcock Cap. 594	W	USED AS ELEMENTARY SCHOOL		980 (6-9)	980 (6-9)	----------
	N			Eanes 764	Eanes 764	
Craighead Cap. 891	W	119 (6-7)	383 (1-5)	CONVERTED TO HIGH SCHOOL		----------
	N	405	512			
Williamson Cap. 1350	W	1 (8-12)	USED AS HIGH SCHOOL ONLY			----------
	N	1143				
Hall Cap. 1188	W	0 (1-6)	182 (6-8)	USED AS ELEMENTARY SCHOOL		
	N	686	573			
Dunbar Cap. 1131	W	2 (7-8)	6 (7-8)	1044 (6-9) 12/	1044 (6-9)	
	N	837	912	Central 1562	1562	

10/ Under Plan B-1 Alternative the same middle school and high school plans proposed in Plan B or Plan B-Alternative could be used. If Plan B were used, Toulminville would be substituted for Fonvielle as part of the Washington-Phillips middle school facility.

11/ Under Plans B and B-Alternative Eanes would be used with Woodcock as a Middle School. The combined capacities of the two facilities would be 1812.

12/ The total capacity for the Dunbar-Central facilities is 2639.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Central Cap. 1508	W	USED AS HIGH SCHOOL		(6-9) 1044	(6-9) 1044	----------
	N			1562	1562	
Phillips Cap. 1073	W	(7-8) 752	(7-8) 861	(6-9) 13/ 1040	(6-9) 14/ 1040	----------
	N	122	171	Wash-Fon. 1562	Wash-Fon. 1562	
Washington Cap. 1043	W	(7-9) 0	(7-9) 16	(6-9) 1040	(6-9) 1040	----------
	N	1528	1559	Fon-Phil. 1562	Phil-Toul. 1562	
Fonvielle Cap. 1155	W	USED AS ELEMENTARY SCHOOL		(6-9) 1040	USED AS ELEMENTARY SCHOOL	
	N			Phil-Wash. 1562		
Toulminville Cap. 609	W	USED AS HIGH SCHOOL			(6-9) 1040	----------
	N				Fon-Phil. 1562	
Mob. Co. Tr. Cap. 1305	W	(6-12) 0	(6-12) 102	(6-7) 432	(6-7) 432	----------
	N	1283	1177	859	859	
Prichard Cap. 609	W	(6-9) 353	(6-8) 340	(6-7) 240	(6-7) 240	----------
	N	170	167	410	410	

13/ The total capacity for the Phillips-Washington-Fonvielle facilities is 3271.

14/ The total capacity for the Phillips-Washington-Toulminville facilities is 2725.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Carver Cap. 1023	W	1	8	CONVERTED TO HIGH SCHOOL		----------
	(6-7)		(6-8)			
	N	857	867			
Trinity Gard. Cap. 899	W	0	0	380	380	----------
	(7-12)		(6-8)	(6-7)	(6-7)	
	N	1084	992	690	690	
Clark Cap. 1390	W	1089	1242	536	536	----------
	(7-9)		(7-9)	(8)	(8)	
	N	203	278	948	948	
Azalea Rd. Cap. 1015	W	1039	----------	857	857	----------
	(7-8)			(6-7)	(6-7)	
	N	38		133	133	
Scarborough Cap. 1000	W	638	----------	855	855	----------
	(6-8)			(6-7)	(6-7)	
	N	77		133	133	
Hillsdale Cap. 847	W	431	----------	858	858	----------
	(6-8)			(8)	(8)	
	N	217		131	131	

HIGH SCHOOLS

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Rain Cap. 986	W	(7-12) 1296	(7-12) 1150	(7-12) 1150	(7-12) 1150	----------
	N	112	97	97	97	
Williamson Cap. 1350	W	(8-12) 1	(9-12) 762	16/ (10-12) 1008	(10-12) 1008	----------
	N	1143	474	Craig. 767	Craig. 767	
Central Cap. 1508	W	(9-12) 0	(9-12) 17	CONVERTED TO MIDDLE SCHOOL		----------
	N	1470	1372			
Murphy Cap. 2813	W	(9-12) 2602	(9-12) 2171	(10-12) 1440	(10-12) 1440	----------
	N	239	425	1360	1913	
Toulminville Cap. 609	W	(10-12) 0	(10-12) 20	(12) 0	CONVERTED TO MIDDLE SCHOOL	----------
	N	1135	1145	365		
Blount Cap. 1972	W	(8-12) 0	(9-12) 22	Vig.-Bien 15/ (9-12) 1908	Vig-Bien (9-12) 1908	----------
	N	1893	1875	Carver 2962	Carver 3516	

16/ The total capacity for the Williamson-Craig-Head facilities is 2241.
15/ The total capacity for the Vigor-Bienville-Blount-Carver facilities is 5424.

School		1969-70	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.
Carver Cap. 1023	W	USED AS MIDDLE SCHOOL		Vig-Bien 1908 (9-12)	Vig-Bien 1908 (9-12)	----------
	N			Blount 2962	Blount 3516	
Vigor Cap. 1769	W	1504 (10-12)	1296 (9-12)	Blt-Carv 1908 (9-12)	Blt-Carv 1908 (9-12)	----------
	N	195	468	Bienville 2962	Bienville 3516	
Bienville Cap. 660	W	USED AS ELEMENTARY SCHOOL		Blt-Carv 1908 (9-12)	Blt-Carv 1908 (9-12)	----------
	N			Vigor 2962	Vigor 3516	
Mobile Co. Tr. Cap. 1305	W	0 (6-12)	102 (6-12)	USED AS MIDDLE SCHOOL ONLY		----------
	N	1283	1177			
Davidson Cap. 1972	W	1738 (9-12)	2150 (9-12)	1738 (9-12)	1738 (9-12)	----------
	N	604	70	604	51	
Shaw Cap. 1044	W	1242 (9-12)	1250 (9-12)	1150 (9-12)	1150 (9-12)	---------
	N	237	240	471	196	

[Maps omitted – see original record]

District Court Order of January 28, 1970

To the Board of School Commissioners of Mobile County, Alabama, and Each Member Thereof:

At pretrial conference in this case held Thursday, January 22, 1970, both the Government and the School Board were requested to submit to the Court at 9 A.M., Tuesday, January 27, 1970, (yesterday) revision of plans submitted by the School Board on December 1, 1969, and revision of plans submitted by Health, Education & Welfare as Plan B Alternative, on December 1, 1969, in accord with the mandates of the Supreme Court and the Fifth Circuit Court of Appeals. The Government submitted such revised plan at 9 A.M. on Tuesday, January 27, 1970, but the School Board did not do so, and as of 9:30 A.M. this date, has not done so.

The School Board is the most knowledgeable on the subject and upon whom the Court would prefer to seek advice.

The School Board is now ORDERED to forthwith submit to the Court such revised plan.

DONE at Mobile, Alabama, this the 28th day of January 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of January 31, 1970

This Court entered a decree in this case on August 1, 1969, under which the public school system of Mobile County opened and operated through the first semester of 1969. That part of the desegregation plan devised in said order which was to be implemented in September 1970, was in accord with recommendations of Health, Education and Welfare, with alterations or modifications to meet particular educational principles. This Court's decision was appealed and was affirmed by the Fifth Circuit Court of Appeals sitting en banc on December 1, 1969.

On January 14, 1970, the Supreme Court of the United States reversed the Fifth Circuit Court of Appeals and remanded the decision to the Court of Appeals for further proceedings consistent with the Supreme Court's opinion. On January 21, 1970, the Court of Appeals issued its mandate to this Court, which in effect stated that there could be no deferral of school desegregation beyond February 1, 1970.

Faced with this mammoth task, the Court on its own motion sought the advice and professional assistance of all the parties. On the afternoon of January 23, 1970, the Court conducted a pretrial conference with the attorneys representing all of the parties and at such time the Court requested attorneys for the school board and the government to submit a revision of the plans submitted by the school board on December 1, 1969. The Court realizing its plan of August 1, 1969, in some respects was still a dual system, ordered the school board to submit a plan not later than December 1, 1969, which would disestablish such system, which plan was to be implemented on September 1, 1970.

The Court also called upon the Government for revision of the HEW plan which the government thought should be followed for the remainder of the present school year. These revised plans were to be furnished to the Court by 9 o'clock A.M. on the 27th day of January. The government furnished the requested plans. The school board did not, and by order dated January 28, 1970, at 9:30 A.M., the school board was ordered to submit such revised plans. As of this date, they have not done so. The school board and its staff of administrators and professional educators, who know the Mobile Public School System best, who have all the facts and figures which are absolutely necessary for a meaningful plan, have not assisted or aided the Court voluntarily. Consequently, the plan which is by this decree being ordered is not perfect, but the ten day period from January 21st to February 1st obviously allows inadequate time to work out an ideally legal and workable plan for educating approximately 75,000 school children, particularly when the change comes in mid-semester. This plan pleases no one—the parents and students, the school board, Justice Department, NAACP, nor in fact, this Court. The Court's plan closes schools which the school board wants open. It opens schools which the Justice Department wants closed. But a decision had to be made and it was the duty and the responsibility of this Court to make that decision. The Supreme Court of this country has spoken, and this Court is bound by its mandate. It is the law. It must be followed.

The revised HEW plan which the government submitted to the Court would require no busing of students, but ex-

tensive pairing of several schools. An alternate plan submitted by HEW and upon which the plaintiffs insist, would require the busing of children from areas of the city to a different and unfamiliar area as well as the pairing of many schools. The distance between some of the schools by vehicular traffic would be approximately fifteen miles. The government plan and the HEW plan would materially change the grade structure for approximately thirty-four schools, and in some instances, would completely change each school's identity. The government asked the Court to close many of the high schools which are attended by 90% or more of Negro pupils, among them, Central High and Mobile County Training. This I am unwilling to do as I think it would be unfair to the Negro population of this city. Many of them have graduated from one or more of these schools. They take pride in them. In many areas, including sports, there is much rivalry between these schools and I do not think the traditions which they have created over the years should be destroyed.

Under one of the HEW plans it would have necessitated a child in the Austin area to attend Austin in the fifth grade and from the sixth through ninth grades he would have to change three times, namely, to Phillips, Washington and Toulminville, and in the tenth grade to Murphy, thus attending five different schools in six years. Under one of the HEW plans of pairing schools, a child would have gone to Dodge in the first and second grades, Williams in the third grade, and Owens in the fourth, fifth and sixth grades. The distance from Dodge to Williams is approximately 8.6 miles and from Williams to Owens approximately 7.4 miles and from Dodge to Owens, approximately 11.4 miles.

Admittedly these material changes in grade structures and in identity, and the pairing of schools and the necessity of busing great distances, are motivated for the sole purpose of achieving racial balance. In this Court's opinion, the Supreme Court has not held that such drastic techniques are mandatory for the sole purpose of achieving racial balance. By the same token, the Court is of the opinion that such techniques in certain instances, must be utilized to remove the effect of the dual school system. Therefore, it was necessary to change the grade structure on a limited basis and in one instance, the identity of a school. These alterations were not motivated to achieve racial balance, but to desegregate the public school system.

I have said many times that the best thing that could happen would be for this litigation to come to an end. This is true. But I am unwilling to disregard all common sense and all thoughts of sound education, simply to achieve racial balance in all schools. I do not believe the law requires it. And this litigation will continue to be stirred as long as adequate funds are provided for those who want litigation, for the sake of litigation, without regard to the rights of the children and parents involved.

The Court has attempted as nearly as possible to comply with the mandate of the Appellate Courts and yet leave it humanly and educationally possible to operate the schools. Laboring under the handicap of time, the Court has accomplished what it finds to be the plan most workable under the circumstances, both from an educational and implemental point of view.

Therefore, is it ORDERED, ADJUDGED and DECREED by the Court that the area attendance desegregation plan sub-

mitted by the school board on December 1, 1969, for those school zones lying East of I-65, with one exception set out below, is hereby adopted and put into effect as of February 1, 1970, with the following exceptions:

ELEMENTARY SCHOOLS EAST OF I-65

1. The Emerson Elementary School serving Grades 1-6 shall be closed. Those students who attend Emerson will now attend Council or Leinkauf Elementary Schools, as illustrated by the map attached hereto and identified as Exhibit "A". Those sixth grade students now attending Emerson shall be enrolled at Hall Junior High School. The placement of the Emerson students in other area attendance zones are reflected by modification of the Council-Leinkauf area attendance zones.

MIDDLE SCHOOLS EAST OF I-65

2. The Hall area attendance zone shall be increased to relieve the overcrowding situation at Dunbar Junior High and to include those sixth grade students who previously attended Emerson or Old Shell Road. The area attendance zones for Washington Junior High, Phillips Junior High, Mae Eanes Junior High, and Dunbar Junior High, have all been altered to achieve a desegregated school system, as reflected by area attendance zone map attached hereto and identified as Exhibit "B".

HIGH SCHOOLS EAST OF I-65

3. Trinity Gardens School is hereby changed to a middle school serving Grades 6-8. The high school students

who previously attended Trinity Gardens shall attend Blount High School.

Murphy High School area attendance zone has been increased to achieve desegregated school system and to eliminate the overcrowded enrollment at Toulminville High School, as reflected by area attendance zone map attached hereto and identified as Exhibit "C".

It is FURTHER ORDERED, ADJUDGED and DECREED by the Court that those graduating high school seniors who are not presently attending the high school which serves their area under the Court's plan submitted this date, shall be allowed to remain in the high school which they presently attend for the remainder of the 1969-70 school year.

However, since the identity of the Trinity Gardens school has been changed from a high school to a school serving the middle grades, the seniors at Trinity Gardens shall now be attending Blount High School. Under the circumstances, the Court authorizes the Board, faculty, and the students themselves, in instituting this plan, to maintain the identity of the Trinity Gardens seniors as a unit by whatever proper programs they deem necessary at Blount High School.

SCHOOLS LYING WEST OF I-65

4. The Davidson High School attendance area is hereby enlarged to include those students who previously attended Murphy High School under the area attendance zone lying West of I-65 as illustrated by Exhibit "C" attached hereto.

It is FURTHER ORDERED, ADJUDGED and DECREED that the area attendance zones lying West of I-65 as decreed by

this Court on August 1, 1969, with the one exception above noted, shall remain in effect.

Paragraph VII of the Court's order of August 1, 1969, pertaining to faculty is incorporated in its entirety in this order and should be implemented forthwith.

The Board shall publish or cause to have published in the local newspaper, the complete text of this decree and the maps attached, not later than Wednesday, February 4, 1970. In addition, the school board shall post or cause to be posted, in a conspicuous place in each school in the system in which this decree changes area attendance zones from that established in the August 1, 1969, decree, and at the offices of the school board.

The Court finds that this decree disestablishes the operation of a dual school system in Mobile County and establishes a unitary system.

This plan shall be implemented forthwith.

DONE at Mobile, Alabama, this the 31st day of January 1970.

DANIEL H. THOMAS
United States District Judge

[Maps omitted—see original record]

District Court Order of February 4, 1970

In the Court's order of January 31, 1970, the majority to minority transfer policy, as set out in the Opinion of the Fifth Circuit Court of Appeals dated December 1, 1969, was inadvertently omitted.

NOW THEREFORE, the order of this Court entered in this cause on January 31, 1970, is amended by adding thereto the following:

The School Board shall permit a student attending a school in which his race is in the majority to choose to attend another school where space is available, and where his race is in the minority.

DONE at Mobile, Alabama, this the 4th day of February 1970.

DANIEL H. THOMAS
United States District Judge

Court of Appeals Opinion of February 16, 1970

Before

TUTTLE, WISDOM and GOLDBERG,
Circuit Judges

GOLDBERG, *Circuit Judge*:

For almost a decade there have been judicial efforts to desegregate the schools of Mobile County, Alabama. We do not tarry now to count the many appeals to this court in furtherance of this hope, for we are concerned today with only a single recent episode in this almost Homeric odyssey. We wonder when the epilogue will be written.

The latest episode is this appeal by David L. Jacobs, Bill Rosser, and the American Friends Service Committee from a preliminary injunction issued by the United States District Court for the Southern District of Alabama. The injunction grew out of a series of demonstrations in April and May of 1969 in support of school desegregation and other civil rights objectives in Mobile County. According to the school board's affidavits—which are contradicted by appellants' affidavits—these demonstrations led to absenteeism on the part of some students and resulted in substantial disruption of the educational program in some schools.

On May 8, 1969, the Board of School Commissioners of Mobile County filed a petition in the district court, asking that appellants and others be made parties to the ongoing school desegregation proceeding, claiming that they were responsible for organizing and directing the demonstrations. In its petition the school board asked that these

parties be enjoined from engaging in activities designed to dissuade students from attending school or to disrupt the school board's operation of the Mobile County schools. The district court entered an order making appellants and others named by the petition parties to the proceedings and scheduled for May 12, 1969, a hearing on the school board's petition for an injunction. The court also directed that testimony would be by affidavit only.

When the hearing was convened on May 12, appellants filed a motion to dismiss the petition and another motion asking that any hearing include oral testimony or depositions. The court denied the latter motion, but did not then rule on the motion to dismiss. In response to a request by appellants for additional time to prepare, the court continued the proceedings until the next day.

When the hearing reconvened on May 13, appellants filed a supplement to their motion to dismiss and again noted their objection to proceeding by affidavit only. The court summarily denied the motion to dismiss and reiterated its previous ruling that the proceedings would be by affidavit only. During these proceedings on May 13 all parties submitted their testimony by affidavit, and the court took the matter under advisement, allowing the parties one additional day for the submission of counter affidavits.

On May 16, 1969, the district court issued a preliminary injunction by which the appellants were

> "enjoined and restrained from obstructing and preventing or attempting to obstruct and prevent, the attendance in classes of students and faculty members by inducement, encouragement, assistance, intimidation,

> or other activities which seek to dissuade students and faculty members from attending classes, or seeks [sic] to disrupt in any way, the operation of the Mobile County Public School System."

This injunction was not accompanied by any findings of fact or conclusions of law.

After the issuance of the injunction appellants filed a motion in the district court requesting a stay of the injunction. This motion was denied by the district court. Appellants then sought from this court a stay of the injunction pending appeal. On May 22, 1969, this court issued an order granting the stay "except as to picketing activity on school property." Appellants now seek complete dissolution of the injunction; the school board seeks to uphold the full sweep of the injunction as originally issued by the district court.

In their attack on the injunction appellants raise several issues concerning the constitutionality of the injunction and the procedural fairness of the proceedings below. We are unable to decide these issues because of the incomplete and inconclusive state of the record. Since the trial court failed to give us the benefit of findings of fact and conclusions of law, we have before us only the numerous affidavits introduced by the parties.

[1, 2] In failing to make findings and conclusions the trial court violated Rule 52(a) of the Federal Rules of Civil Procedure. Rule 52(a) provides in pertinent part that "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, * * * and in granting or refusing interlocutory injunctions the court

shall similarly set forth the findings of facts and conclusions of law which constitute the grounds of its action." It is well established that a district court issuing a preliminary injunction must comply with the provisions of this rule. Carey v. Carter, 1965, 120 U.S.App.D.C. 182, 344 F.2d 567; Chas. Pfizer & Co. v. Zenith Laboratories, Inc., 3 Cir. 1964, 339 F.2d 429; Carpenters' District Council v. Cicci, 6 Cir. 1958, 261 F.2d 5; Bowles v. Russell Packing Co., 7 Cir. 1944, 140 F. 2d 354; 2B Barron & Holtzoff, Federal Practice and Procedure §1126 (1961). In the words of the Supreme Court, a full and fair compliance with Rule 52(a) "is of the highest importance to a proper review of the action of a court in granting or refusing a preliminary injunction." Mayo v. Lakeland Highlands Canning Co., 1940, 309 U.S. 310, 316, 60 S.Ct. 517, 520, 84 L.Ed. 774, 779; see Featherstone v. Barash, 10 Cir. 1965, 345 F.2d 246, 249-250. Consequently, "[w]here the trial court fails to make findings, or to find on a material issue, and an appeal is taken, the appellate court will normally vacate the judgment and remand the action for appropriate findings to be made." 5 Moore's Federal Practice ¶52.06[2], at 2718 (2d ed. 1969); see, e. g., Chas. Pfizer & Co. v. Zenith Laboratories, Inc., *supra*.

[3, 4] We recognize that compliance with Rule 52(a) is not a *jurisdictional* requirement for appeal; an appellate court may decide the merits of an appeal in the absence of fact findings in the rare case in which "a full understanding of the issues [can] be reached without the aid of findings." Urbain v. Knapp Brothers Manufacturing Co., 6 Cir. 1954, 217 F.2d 810, 816, cert. denied, 349 U.S. 930, 75 S.Ct. 772, 99 L.Ed. 1260; *accord,* Huard-Steinheiser, Inc.

v. Henry, 6 Cir. 1960, 280 F.2d 79, 84; Featherstone v. Barash, *supra*, 345 F.2d at 250-251; Hurwitz v. Hurwitz, 1943, 78 U.S. App.D.C. 66, 136 F.2d, 796, 799, 148 A.L.R. 226; see Mongiello Bros. Coal Corp. v. Houghtaling Properties, Inc., 5 Cir. 1962, 309 F.2d 925, 929-930. We state most emphatically, however, that the present case is *not* one of those unusual cases in which the absence of fact findings can be overlooked by the appellate court. In this case we cannot possibly reach "a full understanding of the issues" in the absence of findings by the trial court.

It is an understatement to say that the facts in this case are hotly disputed. The parties by their affidavits present sharply different versions of the factual context in which the injunction was issued. On the basis of these conflicting affidavits it is utterly impossible to ascertain in more than the most general way such basic factual data as the nature of the demonstrations which led to the issuance of the injunction, the role played by the appellants in these demonstrations, and the effect of these demonstrations on the school system. The un-illuminating state of the present record totally precludes meaningful appellate review of the issues presented by the issuance of the district court's injunctive order.

The order of the district court granting the preliminary injunction is vacated, and the cause is remanded.

District Court Order of February 27, 1970

Motion to require service of desegregation plan filed on January 2, 1970 by plaintiffs is GRANTED.

District Court Order of March 12, 1970

The Board of School Commissioners of Mobile County, Alabama, petitioned this Court on February 18, 1970, March 2, 1970, and March 10, 1970, to modify its order of January 31, 1970, in the above-styled cause.

Now after careful consideration thereof, it is ORDERED, ADJUDGED and DECREED by this Court that the order of January 31, 1970, is hereby amended to include the following:

1. The attendance zone boundary line between Westlawn Elementary School and Mertz Elementary School shall be located as was designated by this Court in its Order of August 1, 1969.

2. The School Board shall continue to maintain a sixth grade at Mertz Elementary School for the remainder of this school year and the sixth grade students of Mertz who were reassigned to Mae Eanes Junior High School by the January 31, 1970, Order shall be permitted to remain at Mertz for this school year.

3. The School Board shall continue to maintain a sixth grade at Morningside Elementary School for the remainder of this school year and the sixth grade students of Morningside who were reassigned to Mae Eanes by the January 31, 1970, Order shall be permitted to remain at Morningside for this school year.

4. The Board shall maintain at Trinity Gardens School for the remainder of this school year only, a twelfth grade program, and the twelfth grade students of Trinity Gar-

dens who were reassigned to Blount High School by the January 31, 1970, Order shall be permitted to remain and graduate from Trinity Gardens.

5. The Board shall continue to maintain a ninth grade at Mae Eanes Junior High School and the ninth grade students of Mae Eanes who were reassigned to Murphy High School and Williamson High School by the January 31, 1970, Order shall be permitted to remain at Mae Eanes School for this school year only.

DONE at Mobile, Alabama, this the 12th day of March 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of March 16, 1970

On January 14, 1970, the Supreme Court of the United States reversed this case and the Fifth Circuit on January 21st, ordered this Court to enter its plan for implementation on February 1, 1970. This Court entered its decree on January 31, 1970, and ordered that it be implemented forthwith. The Board of School Commissioners announced that it would be implemented on March 16, 1970, today.

The Legislature of Alabama passed the Freedom of Choice Bill on the 4th day of March 1970. The School Board then passed a resolution to the effect that it would not follow this Court's decree but would continue to operate as it has heretofore.

In 1809, Chief Justice Marshall said: "If the legislators of the several states may, at will, annul the judgments of the Courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solumn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals."

The School Board is required to follow the order of this Court of January 31, 1970, as amended, and if the same is not followed within three days from this date, a fine of $1,000 per day is hereby assessed for each such day, against each member of the Board of School Commissioners.

The plaintiffs in this case, on the 10th day of March 1970, filed a petition requesting this Court to declare the Freedom of Choice Act of the Legislature of the State of Alabama unconstitutional. This case is not the proper vehicle in which to test the constitutionality of said Act. The said petition is therefore dismissed.

Done at Mobile, Alabama, this the 16th day of March 1970.

Daniel H. Thomas
United States District Judge

Court of Appeals Order of March 25, 1970

BY THE COURT:—

In order that this court might undertake to decide whether the Mobile County School System as a whole has been converted into a unitary school system, it is necessary that this court be supplied with additional information. Therefore, pursuant to the authority contained in 28 USCA § 2106, the district court is directed to supplement its findings of fact in the within matter by filing the following:

(1) a table showing the school population, by race, as of the present time in each elementary, junior high, senior high, and special school in the system;

(2) a table showing the projected school population, by race, of each school in the system under (a) the school board plan submitted December 1, 1969, (b) the original HEW plan, and (c) HEW plan B-alternative;

(3) a table showing the instructional positions, by race, as of the present time in each school in the system;

(4) information describing the transportation system employed by the Mobile County schools so that this court might determine whether it is operated on a non-segregated and otherwise non-discriminatory basis;

(5) information as to whether there exists a biracial advisory committee to the school board, and if not whether Negroes are represented on the school board;

(6) information regarding whether all extracurricular activities, including sports, are being operated on a non-segregated basis throughout the system;

(7) information regarding whether all facilities are being operated on a non-segregated basis;

(8) whether the school board has complied with the requirement announced in *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1969, —— F.2d —— (consolidated cases en banc) [Nos. 26285 et al, slip opinion dated December 1, 1969] that all school construction, school consolidation and site selection (including the location of temporary classrooms) in the system be done in a manner which will prevent the recurrence of the dual school structure by taking into consideration residential housing patterns;

(9) information as to whether there exists a majority to minority transfer policy. If so, describe.

These findings of fact should be filed with this court within 20 days from the date hereof. Jurisdiction of this appeal is retained in this court during the limited remand for the purposes herein stated.

REMANDED for further proceedings consistent herewith.

District Court Order of March 31, 1970

Pursuant to Order of the United States Fifth Circuit Court of Appeals dated March 25, 1970, received by the Clerk of this court March 30, 1970, the Board of School Commissioners of Mobile County is ordered and directed to furnish the court the information set out in said order in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) not later than April 10, 1970, at 3:00 p.m. Said information is to be furnished in affidavit form.

Done at Mobile, Alabama, this the 31st day of March, 1970.

DANIEL H. THOMAS
Chief Judge

Plaintiffs' Motion to Establish Procedures on Remand Filed April 6, 1970

Plaintiffs, Birdie Mae Davis, et al., move this Court for an order establishing the following procedures on remand:

1. The School Board shall be required to file by April 7, 1970 proposed findings of fact on each matter delineated in the Fifth Circuit's order of March 25, 1970.

2. The Court shall hear evidence and arguments in respect to the findings required by the remand on April 14, 1970.

District Court Order of April 14, 1970

1. Motion to establish procedures on remand, filed by plaintiffs, Birdie Mae Davis, et al. on April 6, 1970, DENIED.

District Court Order of April 14, 1970

In response to Order of the United States Fifth Circuit Court of Appeals dated March 25, 1970, and received by the Clerk of this court on March 30, 1970, this Court entered an order on March 31, 1970, directing the Board of School Commissioners of Mobile County to furnish the Court information as requested in the March 25th Order of the Fifth Circuit Court of Appeals. In response, the School Board filed on April 10, 1970, an Affidavit of James A. McPherson, together with exhibits attached thereto, purporting to give the information requested by the Order of the Court of Appeals dated March 25, 1970.

The Court adopts as its finding of fact the statistical information furnished by said exhibits. The Court believes that the general information furnished therein, excluding self-serving declarations and speculative opinions, is correct and furnishes the information requested by the Court of Appeals in its Order of March 25, 1970. Said affidavit and attachments are submitted herewith in accordance with said Order.

DONE at Mobile, Alabama, this the 14th day of April 1970.

DANIEL H. THOMAS
United States District Judge

Affidavit of James A. McPherson, Filed on April 10, 1970

STATE OF ALABAMA
COUNTY OF MOBILE

Personally appeared before me the undersigned authority in and for said county and said state, JAMES A. MCPHERSON, who being by me first duly sworn, did make affidavit and say:

My name is JAMES A. MCPHERSON. My address is 103 Baratara Drive, Chickasaw, Alabama. I am 43 years old. I am Associate Superintendent of the Mobile County Alabama Public School System. As such I hold the number two administrative position in the school system, ranking immediately below the Superintendent. Prior to assuming this position I was an Assistant Superintendent, in charge of the Division of Pupil Personnel and Special Services. I have also had a number of years experience in the system in other capacities, such as teacher and principal. As Associate Superintendent I have had the primary administrative responsibility of working with the desegregation process that has been in progress in the school system since 1963. I have testified in the United States District Court, Southern District of Alabama, on a number of occasions in connection with the continuing litigation there concerning this desegregation process. I have been called to testify at various times by both the plaintiffs and the defendant School Board, as well as by the United States Department of Justice. My personal and professional qualifications appear fully in the record from these past occasions, consequently, I will not set them out again here.

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Filed on April 10, 1970

This affidavit is made specifically for the purpose of submission to the United States District Court, Southern District of Alabama, in response to and compliance with the Order of that Court dated March 31, 1970. I make this affidavit based in part upon information of which I have personal knowledge and based in part upon information and reports given me, at my request, by other members of the professional staff of the School Board and other agents, servants or employees of the School Board, upon whom I normally rely for information and reports in the regular course of business.

(1) In response to question number (1) of the Order I make the following comments:

The total desegregation plan for the whole system, now in full implementation, assigns every student in the system to a school on the basis of a unitary system of geographic attendance zones drawn by the District Court itself, either upon the specific recommendation of H.E.W. consultants, or upon the basis of the Court's knowledge and reconciliation of information submitted to it by the professional staff of the School Board, and recommendations made by the H.E.W. consultants, NAACP attorneys, Justice Department Attorneys and the School Board.

On August 1, 1969 the District Court entered a Decree which set out a desegregation plan that fully desegregated all of the school system *except* that part of the system lying East of Interstate Highway 65. Attached hereto, labeled Attachment A, is an enrollment report setting out by race the number of students actually enrolled in each school in the system *except* those lying East of Interstate Highway

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65, as of September 26, 1969, as a result of implementation of this August 1, 1969 Decree.

This Decree of the District Court was reviewed by the Court of Appeals and affirmed. This Decree and the desegregation plan it sets out have been fully implemented in good faith throughout the 1969-70 school year.

Also attached hereto, labeled Attachment B, is a further enrollment report setting out by race the number of students actually enrolled in *every* school in the system, as of September 26, 1969, as a result of implementation of the August 1, 1969 Decree. We do not have, subsequent to this September 26, 1969 report of enrollment, any comprehensive report of enrollment figures showing the actual enrollment, by race, of *every* school in the system.

On January 31, 1970 the District Court entered another Decree that set out a further desegregation plan covering *only* that part of the system lying East of Interstate Highway 65. This Decree fully desegregated that part of the school system; and, according to the Court, when taken with the earlier decree of August 1, fully desegregated the entire school system. This Decree and the desegregation plan it sets out has also been fully implemented in good faith, since March 20, 1970.

Attached hereto, labeled Attachment C, is a report covering just those schools affected by the January 31, 1970 Decree (being all of the schools lying East of Interstate Highway 65, as well as one high school, Davidson, lying West of Interstate Highway 65, which was also affected), setting out the number of students by race that were *assigned* to each school East of Interstate Highway 65 on March 20, 1970 as a result of and on the basis of the plan set out in the January 31, 1970 Decree.

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There are no comprehensive official enrollment figures accurately showing actual enrollment in these schools East of Interstate Highway 65, since implementation of the January 31, 1970 Decree began. We took hurried enrollment samplings by telephone over a period of several days from March 20 through March 26, to get a general running picture of the extent of resistance to and avoidance of our efforts to implement the January 31 Decree; but we know that these figures are incorrect and do not accurately reflect either the number of students by race *now enrolled* in these schools, nor the number of students by race *assigned* to the schools by the desegregation plan contained in the Decree. Attached hereto, labeled Attachments D1, D2 and D3, are copies of these enrollment samplings for March 20-23, March 25 and March 30 respectively.

Upon comparison the various attachments do not coincide. There were obviously more students assigned across racial lines by the January 31, 1970 Decree—that is, negroes assigned to traditionally white schools and vice-versa (Attachment C),—than were in attendance across racial lines when the enrollment samplings were made after implementation of the Decree (Attachments D1, D2 and D3). The difference between the two results from a number of factors.

First, on March 20-30 when the enrollment counts were made, many students, particularly white students assigned to predominantly negro schools, were engaged in a boycott of those schools, some apparently permanently and other apparently temporarily in a show of anger and protest over their forced reassignment during the middle of a semester.

More significantly however, many of the white students in the system involuntarily assigned to predominantly

negro schools have simply refused to accept the assignments. This resulted not only with implementation of the January 31, 1970 Decree, but the August 1, 1969 Decree as well. They have done so in a variety of ways; some have moved their residences to another attendance zone; other have obtained transfers under the transfer provisions set out in the plan; many have moved completely out of the system; several thousand have enrolled in private schools; and hundreds of others have apparently just dropped out of school altogether.

The School Board has in good faith made the assignment of students required by the Court Ordered desegregation plan, and has refused to assign students in a manner contrary to the Court's Orders. The failure of these students to *attend* school as assigned is essentially beyond the control of the School Board; and illustrates somewhat the inherent futility of large scale forced integration.

If we must play the numbers game, it is manifest that the constitutional sufficiency of the desegregation plan should be measured by the number of students it *assigns* across racial lines, rather than by the number of students who actually enroll and attend, greatly diminished from the number assigned by various devices beyond the control of the School Board, or even the effective control of the Court.

(2) Because of the length of the answer to question number (2), I have deferred the answer and have included it at the end of this affidavit immediately after the answer to question number (9).

(3) In response to question number (3) of the Order I make the following comments:

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Attached hereto, labeled Attachment E, is a table showing the instructional positions, by race in each school in the system, as of April 7, 1970.

Every school in the system has a bi-racial faculty. It should be noted that there are negro principals in charge of predominantly white faculties; and negro principals in charge of predominantly white student bodies. It should also be noted that there are white principals in charge of predominantly negro faculties; and white principals in charge of predominantly negro student bodies.

Your attention is also directed to the previous report on faculty filed in the District Court at the direction of the Court on November 26, 1970, which showed an integrated faculty in every school at that time also.

(4) In response question number (4) of the Order I make the following comments:

Mobile is a combined city-county school system, with many rural schools. Thus, in the traditional manner of rural schools systems in this state, there are a substantial number of school buses operated by the School Board to transport students in the rural areas of the county to these rural schools. A few buses have also been used to provide transportation for a small number of students residing in remote outlying areas of the city.

This transportation system is operated on a non-segregated and non-discriminatory basis in every respect. Routes are arranged without regard to race; students are not assigned to busses on a racial basis; nor are they segregated within the buses. The same quality and extent of

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service is provided to all areas of the county without reference to the race of the students living in the areas. Drivers are selected on the basis of character, performance, ability to handle the bus, and location of their home in relation to the beginning of the bus route.

At one time the Board operated a dual transportation system, with overlapping bus routes. Each bus carried students of only one race to one school or another, based upon race. This is no longer the case.

The once dual aspect of the system no longer exists. Schools in the rural part of the system serve specific geographic attendance zones, drawn by HEW experts and approved by both the District Court, and on review, the Court of Appeals; every zone is bi-racial and every school is integrated. School buses are routed in such a manner as to transport all students in each attendance zone to the school serving the zone. These routes are drawn without regard to race, they do not overlap, and each bus picks up and transports every student on its route regardless of the race of the student.

(5) In response to question number (5) of the Order I make the following comments:

There is no "bi-racial advisory committee to the School Board", as such. However, the Board draws assistance from numerous bi-racial groups.

From time to time the School Board has authorized the creation of advisory committees. The persons approved by the Board for membership on such committees have been those who possessed the highest qualifications to render meritorious service without regard to race. Although

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the Board has not activated an advisory bi-racial committee, members of its Staff from time to time, with Board approval, have participated in activities sponsored by advisory bi-racial committees in the community, thus meeting the needs for communications between white and black citizens in the community.

The Board holds two regular meetings each month, the first on the second Wednesday and the second on the fourth Wednesday. All fourth Wednesday meetings are open to delegations. Both black and white citizens alike avail themselves of the opportunity to communicate directly with the Board in such meetings. In addition, leaders of citizens in their respective communities from time to time direct communications to the Superintendent in which they express their concerns, make recommendations and make requests for extended services in their local schools. These communications are made an integral part of regular Board Agendas along with background reports furnished by Staff members. As justified by circumstances, the Board enters into conferences with committees of black and white citizens preliminary to taking formal action in official Board Meetings. It is the practice of the Superintendent and all central office Staff members to meet with committees, black and white parents, representing the several school communities in Mobile County to exchange information and ideas which are mutually helpful in improving public education in Mobile County. Such conferences serve a wide variety of needs. Many important problems are resolved in such conferences, thus reducing the number of conferences in which Board members are expected to participate.

Attached hereto, labeled Attachment J, is a copy of a School Board policy entitled "Parent and Student Griev-

ances." This policy reflects the philosophy of the Board and the philosophy of its Administrative Staff. This policy endorses and encourages the democratic involvement of all parents and students in making public education what it ought to be.

There are no negro members of the School Board, however the Board has no control over this. By law, the members of the Board are elected by the citizens of the County in a general election, in the same manner as all other public office holders in the state. There is no racial restriction upon who may offer for election to the Board. Negroes have offered themselves as candidates for election to the Board on more than one occasion, and one is running in the Democratic Primary at this time, but as yet none have been elected.

(6) In response to question number (6) of the Order I make the following comments:

All extracurricular activities, including sports, over which the School Board has control, are being operated on a non-segregated basis throughout the system.

All athletic teams at every school are open to every student, regardless of race. Participation by minority race students, particularly by negro students at traditionally white schools, has been substantial. For example, several predominantly white high schools this year fielded bi-racial basketball teams with more negro players than white.

There is also cross scheduling between traditionally negro schools and traditionally white schools in all major sports, i.e., football, basketball, baseball and track, during regular season play; and all tournament and play-off competitions are open to and regularly participated in by all

schools on the same basis, without regard to the former or current racial composition of the schools. Again, basketball is an example. Historically, there had been two district or regional play-off tournaments, one for traditionally negro schools and another for traditionally white schools. Now, and for the past two years, there is only one tournament for all teams, and all schools participate.

The same situation pertains to all other extra-curricular activities over which the School Board has control, such as bands and other musical groups, R.O.T.C. units, speech and other academically related competitions, school related social events, parent related activities such as Parent, Teacher Associations and spectator events.

(7) In response to question number (7) of the Order I make the following comments:

All facilities are being operated on a non-segregated basis.

There is no separation of students within individual schools by race, by sex, by class, by tracts, or on any basis, other than of course the normal division of students into grades.

All facilities are made available to all schools in the system without regard to the present or past racial composition of the schools.

Within each individual school of the system, all facilities are made available to all students, regardless of race, on an equal basis.

This includes not only facilities in the strict sense, such as restrooms, lunch rooms, class rooms, laboratories, gymnasiums, libraries, playing fields, and etc.; but also, all services, activities and programs such as bands, orchestras,

choral groups, clubs, counseling services, student governments, honor societies, publication staffs, intramural sports, assemblies, class elections and honors, parties and social activities; and every other facility, activity and program of every school.

It is also significant that no services, facilities, activities or programs have been changed, curtailed or limited due to the race of students; and no special waiting periods or other qualifying factors or circumstances have been attached as a qualification to participation, due to the race of any student.

All schools are treated equally, without regard to past or present racial composition of the school, with regard to the allocation of instructional materials, athletic equipment, facilities, equipment, furnishings, supplies, textbooks and allocated funds; and courses of instruction are offered on the same basis.

The statements above not only reflect the current situation, but are accurately reflective of the situation since 1967.

Not only are all facilities, services, activities and programs *available* to every student without regard to race, and *operated* on a non-segregated basis, but *actual participation* by minority race students is substantial. This progress is a compliment to both the white and negro students who engage in the various activities and programs and to the teachers and administrators responsible for the organization and supervision of these activities and programs. The progress has been so great that there is now no apparent evidence that any minority race student is excluded from any service, facility, program or activity,

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except on the basis of his or her ability to meet the normal criteria established for participation by anyone.

It is not only the increase in the number of negro students now participating in activities in traditionally white schools that is significant, but the degree to which the white students have accepted the negro students into such activities.

(8) In response to question number (8) of the Order I make the following comments:

Yes, the School Board is in compliance with this requirement.

Regarding construction and site selection, because of the uncertainty surrounding what will be required of a school board from time to time during the desegregation process, the Board's building program has been at a total standstill for over two years. No schools have been constructed and no school sites selected during this time. The last schools constructed in the system were Dodge and Adams in 1967 and Grand Bay in 1968. Dodge and Adams opened their doors for the first time in September 1967, both as fully integrated schools. The current enrollment at Dodge is 65 negro and 675 white. The current enrollment at Adams is 311 negro and 686 white. Grand Bay first opened in September 1968. The current enrollment at Grand Bay is 146 negro and 630 white.

Regarding school consolidation, there have been a number of consolidations, some proposed voluntarily by the School Board and some required by the District Court, within the past three years. Each has resulted in a significant increase in the extent of integration. Some of these are:

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1. Closing of the all negro Emerson Elementary School and distribution of its students to adjacent schools, one of which is traditionally negro and one traditionally white.

2. Closing of the all negro Robert Thompson School and consolidation of its students into the otherwise all white Wilmer School.

3. Closing of the all negro Cottage Hill Elementary School and the distribution of its students to the otherwise white Fonde, Shepard and Dodge Elementary Schools.

4. Consolidation of the all white Citronelle and all negro Rosa Lott Schools, resulting in the following current enrollments: Citronelle, 800 white and 400 negro; Rosa Lott, 465 white and 145 negro.

5. Conversion of the all white Augusta Evans School to a school for special students that has a current enrollment of 54 white and 87 negro, and a faculty of 8 negro and 8 white.

6. Closing of the traditionally white Arlington Elementary School and the distribution of its students to surrounding schools, some of which are predominantly white, and some of which are predominantly negro.

7. Closing of the all negro Warren Elementary School and distribution of its students to the predominantly white Crichton Elementary School and other schools, predominantly negro.

8. Closing of the all negro Barney School resulting in distribution of its students to surrounding schools, some predominantly white and some predominantly negro.

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9. Consolidation of the all negro Belsaw and the all white Mount Vernon Schools, resulting in integration of both schools.

10. Consolidation of the all negro St. Elmo and all white Theodore Schools, resulting in the following current enrollments: St. Elmo 436 white, 54 negro; Theodore 1466 white and 335 negro.

11. Consolidation of the all negro Burroughs, all negro Dixon and all negro Dawes Union Schools with the all white Griggs and all white Davis Schools, resulting in:

(a) Closing of the all negro Dawes Union School

(b) Integration of the other four schools producing the following current enrollments:

Burroughs	—	192 white, 290 negro;
Griggs	—	865 white, 41 negro;
Davis	—	591 white, 178 negro;
Dixon	—	249 white, 189 negro.

Regarding the location of temporary or portable classrooms, the Board follows a policy of locating these solely on the basis of and for the purpose of providing the facilities necessary to accommodate the students assigned to the various schools by the terms of the various orders of the District Court itself.

(9) In response to question number (9) of the Order I make the following comments:

By Order dated February 4, 1970, the District Court directed the School Board to put into operation a majority

to minority transfer policy, whereby any student attending a school in which his race is in the majority can, for that reason alone, transfer to another school where his race is in the minority, space being available.

On February 5, 1970 the School Board authorized and instructed the Superintendent and Staff to comply fully with this Order as well as the District Court Decree of January 31, 1970 that it amended. Based upon this instruction the Superintendent and Staff have included the majority to minority transfer provision as a part of the overall transfer policy, all the rest of which was specified by previous court orders.

This entire transfer policy, including the majority to minority transfer provision, is applied uniformly throughout the system.

(2) In response to question number (2) of the Order I make the following comments:

(a) As required by question 2 (a), I have attached hereto, labeled Attachment F, a statistical table setting out by race the anticipated enrollment at every school *affected* by the recommended plan submitted by the School Board on December 1, 1969. This plan concerned *only* the schools lying *east* of Interstate Highway 65; consequently, the statistical table covers only those schools, plus Davidson High School which lies west of Interstate Highway 65, but was also affected.

(b) Answering question 2 (b), I refer now to the original HEW recommended plan filed in the District Court in July 1969.

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The District Court Decree of August 1, 1969 set out a desegregation plan which essentially adopted this HEW recommended plan in all of the schools of the system, *except* those lying *east* of Interstate Highway 65; and this court ordered plan has been implemented in good faith during the 1969-70 school year, fully desegregating all of the system *except* that part *east* of Interstate Highway 65.

With reference to this original HEW plan as it concerns the area now in controversy, i.e., that part of the system and the schools lying *east* of Interstate Highway 65, I would make the following observations and comments.

The original HEW plan, as it relates to the schools east of Interstate Highway 65 reappears identically as Plan B submitted by HEW to the District Court on December 1, 1969. Attached hereto, labeled Attachment G, is the supporting statistical table taken directly from the HEW report filed in the District Court. This table was not prepared by our professional personnel; it was lifted in-toto from the HEW report. I cannot confirm the accuracy of this table, statistically or otherwise. Indeed, examination of the table, as well as the recommended plan it relates to, by our professional staff indicates that it is substantially inaccurate; and further indicates that because of this inaccuracy, any desegregation plan based upon it would be essentially impossible of implementation to begin with.

The statistical data upon which the plan is based is outdated and inaccurate. The original statistical data was gathered and compiled in September 1968. It is now totally inaccurate. Spot checks made of this statistical information, after the HEW plan was filed on December 1, 1969, to determine its accuracy and relevancy indicate that in

a number of instances such figures as the total number of students living in a given area (an attendance zone, or a part of an attendance zone), or the ratio of black students to white or vice versa, are in error by as much as 50%.

In addition to this basic inaccuracy due to obsolescence, HEW apparently made a number of errors in working with the basic statistical data in preparation of its Plans. One example should suffice. The HEW Plan B, according to HEW figures (Attachment G) contemplates an enrollment of 550 at Prichard Junior High School which has a capacity of 609; whereas accurate current statistics indicate that in the zone Plan B would assign to the school there are actually 1421 students who must attend the school. This means that in Plan B HEW has actually assigned 1421 students to a school with a capacity of 609. There are other similar examples. Such an arrangement is simply impossible of implementation.

The plan contemplates, and therefore would require, the utilization of a substantial amount of transportation or bussing, beyond the capacity and capability of the school system's transportation system.

The plan contemplates the closing and non-operation of certain school facilities. The inaccurate statistics on which HEW bases these steps perhaps may indicate such action is justified, but accurate current statistics and projections for the future indicate that these steps cannot be taken.

The plan, as a consequence of its author's total lack of any knowledge of virtually all practical functional factors about the school system and the City of Mobile, is based upon the assignment of many children to schools where they simply cannot as a practical matter attend because

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they simply cannot get to the schools. I have reference to such factors as accessibility; traffic flow patterns; the routes of city and other commercial bus transportation; safety hazards such as railroad tracks, major thoroughfares, business and industrial areas, narrow streets without sidewalks, and other dangerous areas; and absolute barriers such as rivers, streams and interstate highways with only limited crossing places.

In addition to those factors above which make the HEW Plan B simply functionally unworkable, there are many features of the plan which, while workable after a fashion, are educationally unsound. Some of these features are:

Grade Structure in the junior high and senior high schools is totally unstable. There are eight different structures: 6-9, 7-8, 6-7, 8 only, 7-12, 9-12, 10-12, and 12 only. Within these structures are seven two grade schools and three schools of only one grade each. Such an arrangement is so totally unsound from an educational standpoint that it is inconceivable anyone could recommend it unless they were doing so under the necessity of achieving some specific result at the expense of normal sound educational practice.

Several school plants are designated for a use for which they were not constructed and to which they cannot be satisfactorily adopted; such as using the elementary school buildings for junior high schools (Woodcock, Fonville) and high schools (Bienville, Craighead) junior high school buildings for senior high schools (Carver) and senior high school buildings for junior high schools (Mobile County Training School, Central).

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The plan calls for the creation of several so called school complexes, by grouping two, three or even four separate schools together, even though physically they may be widely separated, and treating them as one large school. For example: (a) the Vigor, Blount, Carver, Bienville High School Complex; (b) the Phillips, Washington, Fonville Junior High School Complex; (c) the Eanes, Woodcock Junior High School Complex and (d) the Williamson, Craighead High School Complex. These complexes present many administrative difficulties and other serious problems such as unadaptability of facilities (using Craighead Elementary School as half of a high school complex) and the simple inability of students to get to the schools to which they are assigned.

The plan makes the implementation of adequate curriculum impossible in a number of schools; makes it impossible to conduct many extra curricular activities; and destroys the very important factor of student and parent identification with the neighborhood school as a center of activity. The plan virtually destroys the neighborhood school concept.

The Plan requires the cross town bussing of many *elementary school* students thereby forcing the *very young* children to attend schools far removed from their own neighborhoods, in unfamiliar surroundings where they inevitably experience insecurity.

The basic killing defect in the original HEW proposal, as brought forward in HEW Plan B on December 1, 1969, is the fact that it is simply statistically inaccurate to the extent that it could not be implemented.

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(c) In answer to question 2 (c), I refer now to HEW Plan B-Alternative filed in the District Court on December 1, 1969. This plan also concerns only the schools lying east of Interstate Highway 65. Attached hereto, labeled Attachment H, is the supporting statistical table taken directly from the HEW report filed in the court. This table was not prepared by our professional personnel; it was lifted in-toto from the HEW report. I cannot confirm the accuracy of this table, statistically or otherwise. Indeed, examination of the table, as well as the recommended plan it relates to, by our professional staff indicates that it is substantially inaccurate; and further indicates that any desegregation plan based upon it would be essentially impossible of implementation to begin with.

Plan B-Alternative generally contains the same defects and is subject to the same criticisms as Plan B previously referred to. In addition, upon close examination of the statistical data set out in the plan and a comparison of this data with accurate current data, it is immediately apparent that the statistical data is so grossly inaccurate as to make the plan totally unworkable. These examples will suffice to illustrate the point.

The junior high and senior high zones set up by Plan B-Alternative are the same zones as were recommended by HEW in its previous report of July, 1969, and are reflected in maps attached to that report. The statistical data set out by HEW in Plan B-Alternative, (Attachment H) as well as on the corresponding maps, indicates a total of 1744 students in the zone drawn for Eanes-Woodcock Junior High School Complex (grades 6-9). On the other hand, a current analysis by our pupil personnel division

indicates there are actually approximately 2693 students in the zone in grades 6-9. This is an error of over 900 students in the HEW figures. Consider this in light of the fact that the normal capacity of the school is 1760 students and the fatal absurdity of the HEW error becomes apparent.

In a similar manner, the HEW statistics in Plan B-Alternative (Attachment H) indicate a total of 1291 students in the Mobile County Training School zone, (in grades 6-7). Whereas, a current statistical analysis indicates that there are actually only approximately 362 such students in the zone. This is an error of over 900 students.

In a similar manner Plan B-Alternative purports by the HEW statistics (Attachment H) to assign 2602 students to the Phillips-Washington-Fonville Complex; whereas, in the zone drawn in the plan there are actually approximately 3253 students who must attend the complex. This is an error of over 650 students.

In a similar manner Plan B-Alternative purports by the HEW statistics (Attachment H) to assign 2606 students to the Dunbar-Central Complex, while in actuality there are only 2214 students in the zone drawn in the plan; an error of almost 400 students. These same errors are also found in Plan B, as well as in Plan B-Alternative. Because of these gross statistical errors, Plan B-Alternative simply could not be implemented.

I would direct the following comments to both HEW Plan B and HEW Plan B-Alternative.

The original HEW *Report* was hurriedly prepared by one Dr. Joe Hall, who had no prior contact with or knowledge of Mobile or the Mobile County Public School System. Between June 16, 1969 when he first established a working

relationship with me, and July 7, 1969 when the *Report* was filed with the court (a total of 21 days) he prepared the original *Report* of 109 pages. Well over half of these pages were devoted to a detailed discussion of typical "Chamber of Commerce" information, totally irrelevant to desegregation of the school system. For example, the report explains that among Mobile's major industries are cement, naval stores, ship repair, etc; and its modern ocean terminal can handle 32 vessels simultaneously; and in 1965 unemployment in Mobile County totaled 4.3 per cent of the civilian "at place" labor force; and on and on it goes with reams of worthless information.

Dr. Hall's testimony was taken by deposition at which time he revealed that the actual desegregation *Plan* contained in the Report was prepared not by himself, but by one Dr. Stolee of Miami, Florida and one Dr. Weinkoff of South Carolina; both of whom had never been to Mobile before; both of whom had no prior contact with or information about Mobile or its school system; both of whom arrived in Mobile one day and departed the next, and prepared the plan during the short time of less than 48 hours. In view of these circumstances it is not surprising that the plan contains numerous statistical inaccuracies and other practical impossibilities.

The HEW Report on December 1, setting out both Plan B and Plan B-Alternative was prepared by one Ernest S. Bunch, who styles himself Acting Senior Program Officer, Equal Educational Opportunities. I talked with Mr. Bunch on several occasions although he never asked me for information, advice or assistance. My first contact with Mr. Bunch was on November 17, 1969 very shortly after his arrival in Mobile. Prior to coming to Mobile on that occa-

sion he had no prior contact with Mobile or the Mobile County Public School System.

Based upon my discussions with Mr. Bunch and my subsequent review of the HEW Plan he prepared I am convinced beyond any doubt that he had only a very superficial knowledge of Mobile and the Mobile County Public School System. He obviously has no knowledge whatsoever of many, many factors, the thorough knowledge of which would be essential to anyone who would attempt to formulate a comprehensive plan or system of student assignment with the object and expectation that it should be educationally sound, administratively feasible or, indeed, practically workable. As a result, the HEW Plan of December 1 that he has formulated, is in its entirety, as well as in its various parts or segments, educationally unsound, administratively infeasible and simply will not work. It disregards and will be detrimental to the best interests of the children concerned, black and white alike, and would be destructive to the school system.

The HEW Plan is really four different plans which Mr. Bunch labeled Plan A, *Plan B, Plan B-Alternative,* and Plan B-I-Alternative. Neither of the four plans is based upon original information, study, statistics or research, because Mr. Bunch made no study, conducted no research and gathered no statistics or information. This in fact is conceded in the explanatory preface contained in the plan itself. All Mr. Bunch did was to take statistical data from the previous HEW report of July 1969, and then rearranged schools and students by juggling statistics in several different ways to come up with his various alternative Plans.

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Filed on April 10, 1970

A further important factor not accounted for in the HEW plans, and apparently not even considered, is the financial factor. Implementation of the HEW plans would result in the following costs and expenses to the school system, according to a study made by the professional personnel of the Business Affairs Division:

1. Cost of additions to and conversion of school plant facilities in order to meet changes of use and changes of enrollment required in the HEW plans, $10,495,200.00.

2. Loss of value of buildings and sites to be closed and abandoned, or at least not used, according to requirements of the HEW plans, $2,145,900.00.

3. Acquisition cost of new busses in order to meet the additional transportation required by the various HEW plans:

Plan B	— $321,457.37	(59 busses)
Plan B-Alternative	— $206,932.74	(38 busses)

4. Recurring yearly expense, for operating each year the additional busses required to meet the additional transportation required by the various HEW Plans:

Plan B	— $ 92,700.80	(59 busses)
Plan B-Alternative	— $ 59,705.60	(38 busses)

The school system simply does not have the capability of meeting these increased costs and expenses, whether it be a matter of immediate or future cash outlay, or the absorption of loss due to the closing of facilities.

The HEW plans apparently make no provision whatsoever for special classes to accommodate the several hun-

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dred exceptional (slow, retarded, handicapped, etc.) students in the system who require special classes, teachers, and arrangements. This is most unfortunate.

The HEW plans are totally devoid of any consideration for the future. As far as I have been able to determine from examination and study of the HEW plans, the services of the Mobile Housing Board and the City Planning Commission were not utilized or considered in developing either of the three alternative plans. The original source material from which the plans were developed was prepared by HEW representative Dr. Joe Hall in connection with his previous report of July 1969. In his deposition testimony Dr. Hall admitted that these agencies were not consulted. As a result, expected residential growth in the area in question is not allowed for in the HEW plans; on the contrary, rather than allowing for anticipated growth, the HEW plans would unwisely close schools in this area.

After a close and careful study of Plan B and Plan B-Alternative, it is my firm opinion that both of these plans as submitted to the court are educationally unsound and administratively infeasible; and that they are based upon statistical data which is to a large extent inaccurate, or at least inaccurately stated in the plans, so that the plans are incapable of effective implementation.

Dated at Mobile, Alabama on the 10th day of April, 1970.

/s/ James A. McPherson
James A. McPherson

Subscribed and sworn to before me on the 10th day of April, 1970.

/s/ Eloise W. Harrison
Notary Public

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT A

(See opposite) ☞

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT A

ENROLLMENT REPORT
MOBILE COUNTY PUBLIC SCHOOLS
(Actual Net Enrollment - Sept. 26, 1969)

ALL SCHOOLS EXCEPT THOSE REFERRED TO IN THE
AUG. 1, 1969 COURT ORDER AS BEING EAST OF INTERSTATE-65

SCHOOLS	GRADE	STUDENTS		
		WHITE	NEGRO	TOTAL
Adams	1- 7	686	311	997
Alba	1-12	1514	194	1708
Austin	1- 6	396	22	418
Azalea Road	7- 8	1039	38	1077
Baker	1-12	969	97	1066
Belsaw	6- 8	21	207	228
Burroughs	1- 6	192	290	482
Calcedeaver	1- 6	159		159
Child Guidance	SPEC.	64	20	84
Citronelle	6-12	800	400	1200
Davis	1- 6	591	178	769
Dickson	1- 6	835	193	1028
Dixon	1- 6	249	189	438
Dodge	1- 6	675	65	740
Eight Mile	1- 8	586	110	696
Evans	SPEC.	54	87	141
Fonde	1- 6	679	11	690
Forest Hill	1- 5	560		560
Grand Bay	1- 6	630	146	776
Griggs	1- 6	865	41	906
Hillsdale	6- 8	431	217	648
Hollinger's Island	1- 6	394	2	396
Indian Springs	1- 6	520	12	532
Lee	1- 5	469	119	588

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SCHOOLS	GRADE	STUDENTS WHITE	STUDENTS NEGRO	TOTAL
Lott	1- 5	465	145	61[illegible]
Mobile County High	7-12	602	251	85[illegible]
Mount Vernon	1- 5	84	358	44[illegible]
Orchard	1- 5	754	113	86[illegible]
Saint Elmo	7- 8	436	54	49[illegible]
Saraland	1- 5	661	33	69[illegible]
Satsuma	8-12	1150	267	141[illegible]
Scarborough	6- 8	638	77	71[illegible]
Semmes	1- 8	988	25	101[illegible]
Shaw	9-12	1242	237	147[illegible]
Shepard	1- 6	409	29	43[illegible]
Tanner Williams	1- 6	340	9	34[illegible]
Theodore	7-12	1466	335	180[illegible]
Thomas	1- 6	222	101	32[illegible]
Whistler	1- 6	227	231	45[illegible]
Will	1- 5	657	175	83[illegible]
Wilmer	1- 6	333	59	39[illegible]

[Attachment B Omitted—Same as School Board Report Filed November 26, 1969, *supra*, p. 518a.]

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT C

ENROLLMENT REPORT
MOBILE COUNTY PUBLIC SCHOOLS
ESTIMATED ASSIGNMENT OF STUDENTS AS OF JAN. 31, 1970

LIST OF SCHOOLS AFFECTED BY THE DISTRICT COURT ORDER OF JAN. 31, 1970

(Those schools lying East of Interstate-65 plus Davidson which lies West of Interstate-65 but was also affected.)

		STUDENTS		
SCHOOLS	GRADE	WHITE	NEGRO	TOTAL
Bienville	1- 6	288	313	601
Blount	9-12	8	1935	1943
Brazier	1- 5		955	955
Brookley	1- 6	484	76	560
Caldwell	1- 6	20	390	410
Carver	6- 8	1	899	900
Central	9-12		1233	1233
Chickasaw	1- 6	495	3	498
Clark	7- 9	1080	290	1370
Council	1- 5	2	548	550
Craighead	1- 5	290	569	859
Crichton	1- 6	457	240	697
Davidson	9-12	2296	72	2368
Dunbar	7- 8	5	738	743
Eanes	6- 8	953	252	1205
Fonvielle	1- 6	4	1163	1167
Glendale	1- 5	385	192	577
Gorgas	1- 6	4	1168	1172
Grant	1- 5		1231	1231
Hall	6- 8	180	838	1018
Hamilton	1- 6	622		622
Howard	1- 6	12	432	444
Leinkauf	1- 5	224	235	459

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SCHOOLS	GRADE	STUDENTS WHITE	STUDENTS NEGRO	
Maryvale	1- 5	453	171	
Mertz	1- 5	450		
Mobile County Training	6-12	57	1125	
Morningside	1- 5	631		
Murphy	9-12	2356	516	
Old Shell Road	1- 6	267	106	
Owens	1- 6		1121	
Palmer	1- 5	66	600	
Phillips	7- 8	691	179	
Prichard	6- 8	299	201	
Rain	7-12	1089	112	
Robbins	1- 5		859	
Stanton Road	1- 6	6	976	
Toulminville	10-12		1125	
Trinity Gardens	6- 8		879	
Vigor	9-12	1447	439	
Washington	7- 9		1463	
Westlawn	1- 6	451		
Whitley	1- 5		383	
Williams	1- 6	554	60	
Williamson	9-12	605	408	
Woodcock	1- 5	193	186	

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Filed on April 10, 1970

—3—

United States District Court for the Southern District of Alabama on March 12, 1970 ordered some additional changes that will affect the Estimated Enrollments as of January 31, 1970. These changes and results are as follows:

1. The attendance zone boundary line between Westlawn and Mertz Elementary Schools was relocated back on the same streets as ordered by the Court on August 1, 1969.

   As a result of this change, Westlawn increased by approximately 90 white students and decreased Mertz by approximately 70 white students and Mae Eanes by approximately 20 white students.

2. Mertz Elementary School will maintain a sixth grade for the remainder of the 1969-70 school year.

   As a result of this change, Mertz increased by approximately 73 white students and decreased Eanes by approximately 73 white students.

3. Morningside Elementary School will maintain a sixth grade for the remainder of the 1969-70 school year.

   As a result of this change, Morningside increased by approximately 121 white students and decreased Eanes by approximately 121 white students.

4. Trinity Gardens School will maintain a twelfth grade for the remainder of the 1969-70 school year.

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As a result of this change, Trinity Gardens increased by approximately 117 Negro students and Blount decreased by approximately 117 Negro students.

5. Mae Eanes Middle School will maintain a ninth grade for the remainder of the 1969-70 school year.

As a result of this change, Mae Eanes increased by approximately 28 Negro students and 239 white students. Murphy High School decreased by approximately 3 Negro students and 16 white students. Williamson High School decreased by approximately 25 Negro students and 123 white students.

All graduating seniors were permitted to continue to attend the school where they had been enrolled for the remainder of the 1969-70 school year. A substantial number of senior students would have been assigned across racial lines on March 20, 1970 except for this immunity granted by Court Order. This immunity will no longer be in effect after the end of this school year.

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ATTACHMENT D-1

SCHOOLS	MARCH 20 TOTAL	MARCH 23 - TOTAL NEGRO	WHITE	TOTAL	NUMBER OF NON-CONFORMISTS
Blenville	621	329	300	629	
Blount	1741	1948		1948	
Brazier	799	808		808	
Brookley	580	79	501	580	
Caldwell	381	375	20	395	
Carver	863	920		920	
Central	1240	1254		1254	
Chickasaw	500		500	500	
Clark	1356	267	1071	1338	
Council	532	543	2	545	
Craighead	836	560	286	846	
Crichton	714	260	460	720	
Davidson	2415	73	2363	2436	15
Dunbar	805	806	4	810	
Eames	1265	283	994	1277	
Fonvielle	1179	1179	3	1182	
Glendale	583	188	402	590	
Gorgas	1171	1171	2	1173	
Grant	1272	1275	1	1276	
Hall	869	817	137	954	
Hamilton	582		586	586	3
Howard	404	410	8	418	
Leinkauf	421	279	176	455	
Maryvale	640	167	479	646	
Mertz	437		438	438	
Mobile County Trng.	1184	1188	2	1190	
Morningside	748		749	749	
Murphy	2682	490	2247	2737	6
Old Shell Road	373	110	269	379	
Owens	1308	1328		1328	
Palmer	678	610	65	675	
Phillips	885	176	710	886	
Prichard	514	209	308	517	
Rain	1218	116	1106	1222	
Robbins	847	841	9	850	
Shaw	1400	220	1179	1399	
Stanton Road	987	984	1	985	
Toulminville	1091	1097		1097	
Trinity Gardens	946	964		964	
Vigor	1934	480	1474	1954	
Washington	1452	1462		1462	
Westlawn	508		507	507	
Whitley	386	388		388	
Williams	616	56	562	618	
Williamson	727	625	90	715	
Woodcock	386	203	191	394	
TOTALS	43076	25538	18202	43740	24

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NUMBER OF STUDENTS WHO HAVE NOT REPORTED TO ASSIGNED SCHOOL

Bienville - 1	(March 23)
Clark - 7	(March 23)
Davidson - 11	(March 23)
Prichard - 1	(March 23)
Williamson - 200	(March 23)
Woodcock - 1	(March 23)

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT D-2

ENROLLMENT MARCH 25, 1970

	N	W	T
Bienville	329	300	629
Blount	1755		1755
Brazier	941		941
Brookley	79	501	580
Caldwell	376	20	396
Carver	896	1	897
Central	1268		1268
Chickasaw		498	498
Clark	276	1073	1379
Council	548	2	550
Craighead	594	270	864
Crichton	262	463	745
Davidson	74	2377	2451
Dunbar	812	4	816
Eanes	287	990	1277
Fonvielle	1174	3	1177
Glendale	189	404	593
Gorgas	1172	2	1174
Grant	1274	1	1275
Hall	792	179	971
Hamilton		592	592
Howard	410	4	414
Leinkauf	281	183	464
Maryvale	170	476	646
Mertz		438	438

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	N	W	T
Mobile Co. Trng.	1188	2	1190
Morningside		750	750
Murphy	509	2278	2787
Old Shell Road	119	269	388
Owens	1341		1341
Palmer	613	70	683
Phillips	176	708	884
Prichard	210	311	521
Rain	116	1122	1238
Robbins	841	9	850
Shaw	220	1181	1401
Stanton Road	984	1	985
Toulminville	1099		1099
Trinity Gdns.	972		972
Vigor	473	1470	1943
Washington	1465		1465
Westlawn		507	507
Whitley	388		388
Williams	47	572	619
Williamson	612	68	680
Woodcock	204	191	395

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Filed on April 10, 1970

ATTACHMENT D-3

ENROLLMENT—MARCH 30, 1970

	N	W	T
Bienville	332	292	624
Blount	1761		1761
Brazier	945		945
Brookley	79	501	580
Caldwell	376	20	396
Carver	911	1	912
Central	1280		1280
Chickasaw		498	498
Clark	272	1072	1344
Council	547	2	549
Craighead	576	280	856
Crichton	262	458	720
Davidson	74	2383	2457
Dunbar	812	4	816
Eanes	282	993	1275
Fonvielle	1125	3	1128
Glendale	189	409	598
Gorgas	1172	2	1174
Grant	1274	1	1275
Hall	780	152	932
Hamilton		592	592
Howard	410	3	413
Leinkauf	280	185	465
Maryvale	172	480	652
Mertz		438	438

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	N	W	T
Mobile Co. Trng.	1192	2	1194
Morningside		751	751
Murphy	513	2300	2813
Old Shell Rd.	112	282	394
Owens	1343		1343
Palmer	613	72	685
Phillips	176	711	887
Prichard	211	310	521
Rain	116	1125	1241
Robbins	837	9	846
Shaw	220	1182	1402
Stanton Rd.	987		987
Toulminville	1101		1101
Trinity Gdns.	986		986
Vigor	474	1480	1954
Washington	1461		1461
Westlawn		507	507
Whitley	388		388
Williams	47	572	619
Williamson	618	65	683
Woodcock	206	180	386
	25,562	18,317	43,879

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Filed on April 10, 1970

ATTACHMENT E

[illegible] COUNTY PUBLIC SCHOOLS - INSTRUCTIONAL POSITIONS BY RACE AS OF APRIL 7, 19[illegible]

School	Principal		Asst. Principal		Teachers		Total Professional	
	W	N-W	W	N-W	W	N-W	W	N-W
Adams		1	1		21	16	22	17
Alba	1		1		54	11	56	11
Austin	1				10	3	11	3
Avalon Road	1		1		36	5	38	5
Baker	1		1		37	4	39	4
Belsaw		1			2	7	2	8
Blauville	1				11	7	12	7
Blount		1		1	8	69	8	71
Braxton		1			4	25	4	26
Brookley	1				15	3	16	3
Burroughs		1			10	6	10	7
Calcedeaver	1				3	2	4	2
Caldwell		1			3	11	3	12
Carver		1		1	2	34	2	36
Central		1		1	5	50	5	52
Chickasaw	1				11	3	12	3
Child Guidance					15	2	15	2
Citronelle	1		1		33	16	35	16
Clark	1		1		45	5	47	5
Council		1			3	11	3	12
Craighead	1				14	12	15	12
Crichton	1				19	4	20	4
Davidson	1		2		87	10	90	10
Davis	1				20	4	21	4
Dauphin Island					2		2	
Dickson	1				23	8	24	8

[illegible]: W - White
N-W = Non White

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[illegible] COUNTY PUBLIC SCHOOLS - [illegible] BY RACE AS OF APRIL [illegible]

School	Principal W	Principal N-W	Asst. Principal W	Asst. Principal N-W	Teachers W	Teachers N-W	Total Professional W	Total Professional
Bimm		1			8	5	8	
Dodge	1				17	4	18	
Dunbar		1		1	2	31	2	
Hanco	1		1		35	7	37	
Eight Mile	1				20	5	21	
Evans	1				8	8	9	
Fonde	1				18	2	19	
Fonvielle		1			1	37	1	
Forest Hill	1				14	3	15	
Glendale	1				13	4	14	
Gorgas		1			1	33	1	
Grand Bay	1				19	5	20	
Grant		1			3	37	3	
Griggs	1				21	5	22	
Hall	1			1	12	16	13	
Hamilton	1				15	4	16	
Hillsdale		1	1		16	11	17	
Hollingers Island	1				9	3	10	
Howard		1			1	12	1	
Indian Springs	1				14	2	15	
Lee	1				16	2	17	
Leinkauf	1				9	4	10	
Lott		1			12	8	12	
Maryvale	1				12	8	13	
Morts	1				12	2	13	
Mobile County High	1		1		27	5	29	

Key: W = White
N-W = Non White

Affidavit of James A. McPherson, Filed on April 10, 1970

MOBILE COUNTY PUBLIC SCHOOLS - INSTRUCTIONAL POSITIONS BY RACE AS OF APRIL 7, 1970

School	Principal		Asst. Principal		Teachers		Total Professional	
	W	N-W	W	N-W	W	N-W	W	N-W
Mobile County Training		1		1	6	46	6	48
Montgomery	1		1		30	4	32	4
Morningside	1				20	2	21	2
Mt. Vernon	1				5	8	6	8
Murphy	1		3		102	12	106	12
Old Shell	1				9	2	10	2
Orchard	1				21	5	22	5
Owens		1			2	39	2	40
Palmer		1			1	20	1	21
Phillips	1			1	34	3	35	4
Prichard	1			1	16	6	17	7
Rain	1		1		45	7	47	7
Robbins		1			2	23	2	24
Scraland	1				19	2	20	2
Setsuna	1		1		45	11	47	11
Scarborough	1		1		27	3	29	3
Semmes	1		1		33	4	35	4
Shaw	1		1		53	5	55	5
Shepard	1				12	2	13	2
Stanton Road		1			2	27	2	28
St. Elmo		1	1		11	9	12	10
Tanner-Williams	1				8	3	9	3
Theodore	1		1		65	6	67	6
Thomas	1				7	3	8	3
Toulminville		1		1	6	37	6	39
Trinity Gardens		1		1	3	36	3	38

Key: W - White

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Filed on April 10, 1970

MOBILE COUNTY PUBLIC SCHOOLS - INSTRUCTIONAL POSITIONS BY RACE AS OF APRIL 7, 19

School	Principal		Asst. Principal		Teachers		Total Professi	
	W	N-W	W	N-W	W	N-W	W	
Vigor	1		1		62	19	64	1
Washington		1		1	2	54	2	5
Westlawn	1				13	3	14	1
Whistler	1				13	5	14	1
Whitley		1			3	10	3	1
Will	1				19	6	20	1
Williams	1				14	4	15	1
Williamson		1	1		5	34	6	3
Wilmer	1				10	3	11	1
Woodcock	1				7	5	8	1
TOTALS	58	28	24	11	1560	1059	1642	109

Key: W = White

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT F

STATISTICAL TABLE FOR PROPOSED
ELEMENTARY ATTENDANCE AREAS EAST OF I-65
(Est. Student Population of the Area)
METROPOLITAN

SCHOOL	GRADE	N	W	T
Chickasaw	1 - 6		500	500
Hamilton	1 - 6		625	625
Bienville	1 - 6	313	300	613
Glendale	1 - 5	206	444	650
Whitley	1 - 5	421		421
Palmer	1 - 5	660	60	720
Robbins	1 - 5	805	2	807
Grant	1 - 5	1250	15	1265
Brazier	1 - 5	983		983
Gorgas	1 - 6	1150	8	1158
Stanton Road	1 - 6	1077	14	1091
Fonvielle	1 - 6	1153	8	1161
Old Shell Road	1 - 6	120	250	370
Crichton	1 - 6	243	518	761
Westlawn	1 - 6		483	483
Owens	1 - 6	1237		1237
Caldwell	1 - 6	401	13	414
Howard	1 - 6	465	21	486
Emerson	1 - 6	340	16	356
Council	1 - 5	525	6	531
Leinkauf	1 - 5	96	258	354
Craighead	1 - 5	512	383	895
Hall	SEE MIDDLE SCHOOLS			
Woodcock	1 - 5	170	249	439
Arlington	- -	- -	- -	-
Maryvale	1 - 5	130	478	608
Herta	1 - 5		496	496

Affidavit of James A. McPherson,
Filed on April 10, 1970

STATISTICAL TABLE FOR PROPOSED
ELEMENTARY ATTENDANCE AREAS EAST OF I-65
(Est. Student Population of the Area)
METROPOLITAN

SCHOOL	GRADE	N	W	T
Morningside	1 - 5		631	631
Williams	1 - 6	43	571	614
Brookley	1 - 6	71	502	573

Affidavit of James A. McPherson,
Filed on April 10, 1970

STATISTICAL TABLE FOR PROPOSED
MIDDLE SCHOOL ATTENDANCE AREAS EAST OF I-65
(Est. Student Population of the Area)
METROPOLITAN

SCHOOL	GRADE	N	W	T
Clark	7 - 9	278	1242	1520
Trinity Gardens	6 - 8	992		992
Carver	6 - 8	867	8	875
Prichard	6 - 8	167	340	507
Mobile County Training	6 - 8	543	3	546
Washington	7 - 9	1559	16	1575
Dunbar	7 - 8	912	6	918
Eanes	6 - 8	160	911	1071
Hall	6 - 8	573	182	755
Phillips	7 - 8	171	861	1032
Rain	7 - 8	38	415	453

Affidavit of James A. McPherson,
Filed on April 10, 1970

STATISTICAL TABLE FOR PROPOSED
SENIOR HIGH ATTENDANCE AREAS
(Est. Student Population of the Area)
METROPOLITAN

SCHOOL	GRADE	N	W	T
Vigor	9-12	468	1296	1764
Blount	9-12	1875	22	1897
Mobile County Training	9-12	634	99	733
Central	9-12	1372	17	1389
Toulminville	10-12	1145	20	1165
Murphy	9-12	425	2171	2596
Williamson	9-12	474	762	1236
Rain	9-12	59	735	794
Shaw	9-12	240	1250	1490
Davidson	9-12	70	2150	2220

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT G

HEW PLAN - ORIGINAL

Information taken from a report
filed with the Court by HEW Officials

Elementary Schools	Grade	Students		
		White	Negro	Total
South Brookley	1-6	514	72	586
Morningside	1-6	756	0	756
Williams	1-6	513	43	556
Maryvale	1-6	588	30	618
Hertz	1-6	482	0	482
Hartlawn	1-6	595	0	595
Woodcock	1-6	380	80	460
[illegible]	1-6	3	701	704
Arlington	1-5	384	153	537
Council	1-5	0	560	560
Emerson	1-6	3	518	521
Leinkauf	1-6	323	125	448
Owens	1-6	0	1254	1254
Caldwell	1-6	1	401	402
Howard	1-6	0	465	465
Old Shell Road	1-6	282	130	412
Crichton	1-6	520	253	773
Stanton Road	1-6	3	1077	1080
Fonvielle	1-6	0	1191	1191
Gorgas	1-6	1	1138	1139
Palmer	1-5	52	688	740
Glendale	1-6	549	172	721
Hartley	1-5	0	421	421
Frazier	1-6	0	1197	1197
Scott	1-5	3	1300	1303
Robbins	1-5	2	805	807
Mauvilla	1-6	336	313	649
Hamilton	1-6	643	0	643
Chickasaw	1-6	0	563	563
Rapert	1-6	453	43	496

Elementary Schools	Grade	Students White	Negro	Total
Dodge	1-6	678	54	732
Fonde	1-6	715	11	726
Austin	1-6	391	22	413
Dickson	1-6	772	1	773
Hillsdale	1-6	0	586	586
Orchard	1-5	759	2	761
Will	1-5	678	0	678
Forest Hill	1-5	604	0	604
Whistler	1-6	251	247	498
Thomas	1-6	210	114	324
Indian Springs	1-6	535	11	546
Eight Mile	1-6	344	78	422

HEW PLAN - ORIGINAL

Junior or Middle Schools	Grade	Students White	Negro	Total
Rain	7-8	415	38	453
Eanes	7-9	982	57	1039
Craighead	6-7	153	394	547
Phillips	7-8	838	113	951
Dunbar	7-8	5	928	933
Washington	7-9	0	1493	1493
Mobile County Training	6-8	0	568	568
Prichard	6-9	387	163	550
Carver	6-7	0	881	881
Trinity Gardens	7-8	0	420	420
Clark	7-9	1317	239	1556
Azalea Road	7-8	1044	40	1084
Hillsdale	7-9	0	225	225
Scarborough	6-8	1039	1	1040
Eight Mile	7-8	206	30	236

Affidavit of James A. McPherson, Filed on April 10, 1970

HEW PLAN - ORIGINAL

ior High		Students		
ools	Grade	White	Negro	Total
	9-12	760	49	809
lliamson	8-12	3	1131	1134
ew	9-12	2707	147	2854
ral	9-12	0	1614	1614
kinsville	10-12	0	1107	1107
ile County Training	9-12	0	710	710
ent	8-12	0	1894	1894
ge	10-12	1564	109	1673
city Gardens	9-12	0	637	637
dson	9-12	2289	66	2355
s	9-12	1136	196	1332

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT H

HEW PLAN - B - ALTERNATIVE

Information taken from a report
filed with the Court by HEW Officials

Elementary Schools	Grade	Students White	Students Negro
South Brookley	1-6	514	72
Morningside	1-5	756	0
Williams	1-6	571	43
Maryvale	1-5	588	30
Mertz	1-5	482	0
Westlawn	1-5	595	0
Woodcock	See Junior High Schools		
Hall	1-5	483	664
Arlington Council	1-5	350	659
Emerson	1-5	3	518
Leinkauf	1-5	273	165
Owens	1-5	2	1414
Caldwell	1-5	1	401
Howard	1-5	0	465
Old Shell Road	1-5	232	295
Crichton	1-5	438	348
Stanton Road	1-5	6	900
Fonvielle	1-5	0	1000
Gorgas	1-5	3	963
Palmer, Glendale	1-5	434	931
Whitley	1-5	216	481
Brazier	1-5	10	1022
Grant	1-5	15	1285
Robbins, Hamilton	1-5	638	855
Bienville	See Vigor - Bienville, Carver, Blount -		
Chickasaw	1-5	473	100
Shepard	1-5	453	43

Affidavit of James A. McPherson,
Filed on April 10, 1970

Elementary Schools	Grade	Students White	Negro	Total
Dodge	1-5	565	45	610
Fonde	1-5	715	11	726
Austin	1-5	391	22	413
Dickson	1-5	680	125	805
Hillsdale	See Junior High Schools			
Orichard	1-5	759	117	876
Will	1-5	678	0	678
Forest Hill	1-5	604	0	604
Whistler	1-5	181	205	386
Thomas	1-5	180	95	275
Indian Springs	1-6	535	11	546
Eight Mile	1-6	280	66	346

HEW PLAN - B - ALTERNATIVE

Junior or Middle Schools	Grade	Students White	Negro	Total
Rain	7-8	415	38	453
Banes-Woodcock	6-9	980	764	1744
Craighead	See Senior High Schools			
Phillips, Washington, Toulminville	6-9	1040	1562	2602
Dunbar, Central	6-9	1044	1562	2606
Washington	See Above			
Mobile County Training	6-7	432	859	1291
Prichard	6-7	240	410	650
Carver	See Vigor - Bienville, Carver, Blount — High School			
Trinity Gardens	6-7	380	690	1070
Clark	8	536	948	1479
Azalea Road	6-7	857	133	990
Hillsdale	8	858	131	989
Scarborough	6-7	855	133	988
Eight Mile	7-8	270	42	312

Affidavit of James A. McPherson,
Filed on April 10, 1970

HEW PLAN - B - ALTERNATIVE

Senior High Schools	Grade	Students		
		White	Negro	Total
Rain	9-12	735	59	794
Williamson-Craighead	10-12	1008	767	1775
Murphy	10-12	1440	1913	3353
Central	See Junior High Schools			
Toulminville	See Junior High Schools			
Mobile County Training	See Junior High Schools			
Blount --				
Vigor	9-12	1908	3516	5424
Trinity Gardens	See Junior High Schools			
Davidson	9-12	1738	51	1789
Shaw	9-12	1150	196	1346

Affidavit of James A. McPherson,
Filed on April 10, 1970

ATTACHMENT J

PARENT AND STUDENT GRIEVANCES
Mobile Public Schools
August 27, 1969

1. Channels of communication shall be established and maintained by local school principals to facilitate the appropriate involvement of pupils enrolled in senior high schools and in junior high or middle schools in the development and the improvement of public education; said involvement to include the opportunity for students to share with professional personnel information, concerns and suggestions concerning their educational opportunities.

2. Principals, with the assistance of professional personnel working under their supervision, shall formulate procedures to achieve this objective. Said procedures shall be made known in appropriate ways to students, to professional personnel and to parents of students enrolled; and a copy of said procedures shall be filed with the Assistant Superintendent in Charge of Administration.

3. Individual students who are displeased with action taken by their teachers may take their problems to their principals. If individual students are dissatisfied with action taken by their principals, they may take their problems to their parents or their guardians; then parents or guardians who wish to do so may take their children's problems to local school principals. If parents or guardians are displeased with decisions rendered

and with action taken by school principals, they may take their problems to the Assistant Superintendent in Charge of Administration of Local Schools. If parents or guardians are displeased with decisions rendered and with action taken by the Assistant Superintendent in Charge of Administration, they may take their problems to the Superintendent who, in turn, will appropriately involve the Associate Superintendent as a basis for rendering decisions and for taking corrective action as justified by circumstances. Parents or guardians who are dissatisfied with decisions rendered and with corrective action taken by the Superintendent may then submit in writing background reports on their problems to the Superintendent to be made a part of a regular School Board Agenda. If parents or guardians do not wish to submit written reports on their problems, they may appear at a Board Meeting on regular delegation days and present their unresolved problems to the Board in conformity with the Board's policy dealing with delegations.

4. Groups of students who have grievances, who have concerns about their educational opportunities, and who wish to make suggestions on ways of improving their educational opportunities, may share their concerns and their suggestions with their Student Council. If the Student Council feels that oral and/or written reports submitted deal with matters of general concern to students and merit the consideration of the principal, then appropriate officers of the Student Council may confer with their principal on matters of concern. If the Student Council is dissatisfied with decisons rendered by

the principal or with corrective action taken, it may then submit a written report on student grievances to the Executive Committee of the PTA. If the Executive Committee of the PTA feels that the expressed views and concerns of students merit more consideration than that given by the principal, said committee may then confer with local school principal about problems and issues reported by the Student Council. If the Student Council is dissatisfied with action take by the PTA Executive Committee, it may submit a report in writing to the Superintendent, setting forth its concerns, its grievances, and its suggestions, sending copies of said report to the principal and to the President of the PTA. The Superintendent, in turn, shall furnish copies of said report to members of the Administrative Staff and to members of the School Board.

5. Preliminary to taking action on written reports submitted by the Student Council, the Superintendent shall seek background reports on student's expressed concerns and suggestions from the local school principal and from the President of the local school PTA.

6. If a Student Council is displeased with action taken by the Superintendent, it may request the Superintendent to arrange a conference with the Board. The Board, in turn, on the basis of written reports submitted by the Student Council, by the school principal, by the President of the PTA and by the Superintendent shall decide whether or not a request for a conference will be granted. If such a request is granted, the principal and members of the Executive Board of the PTA shall be invited to attend.

Court of Appeals Opinion of June 8, 1970

Before BELL, AINSWORTH, and GODBOLD, *Circuit Judges.*

BELL, *Circuit Judge*: We consider again the effort to convert the Mobile County School System from dual to unitary status. This is the ninth appeal of the matter to this court.[1] The system is now operating on a student assignment system fashioned by the district court after considering a school board plan of assignment, three separate HEW plans, and one plan submitted by the Department of Justice.

In *Singleton* v. *Jackson Municipal Separate School District*, supra, fn. (1), we approved the student assignment plan of the Mobile County system then in effect for all schools located west of Interstate Highway 65. This appeal basically complains only of the student assignments in the schools located east of I-65. However, in an effort finally to adjudicate the status of this system from the standpoint of all of the essentials required to convert a dual school system into a unitary school system, we have obtained supplemental findings of fact from the district court. See *Ellis* v. *The Board of Public Instruction of Orange County, Florida*, 5 Cir., 1970, —— F.2d —— [No. 29,124, slip opinion dated February 17, 1970]; *Mannings* v.

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[1] *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1969, 419 F.2d 1211 (en banc consideration of Mobile case and 12 additional school desegregation cases); *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1969, 414 F.2d 609; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1968, 393 F.2d 690; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1966, 364 F.2d 896; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1964, 333 F.2d 53; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1963, 322 F.2d 356; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1963, 318 F.2d 63; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1970, 422 F.2d 1139.

The Board of Public Instruction of Hillsborough County, Florida, 5 Cir., —— F.2d —— [No. 28,643, slip opinion dated May , 1970], as examples of the same approach.

In *Ellis* v. *Orange County* and in *Mannings* v. *Hillsborough County,* we adverted to the school desegregation requirements set out in *Alexander* v. *Holmes County Board of Education,* 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19; *Green* v. *County School Board of New Kent County,* 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716, and the decision of this court in *Singleton* v. *Jackson Municipal Separate School District,* supra. In *Ellis* v. *Orange County,* we said:

> "... In *Green* v. *County School Board of New Kent County,* ... the mechanics of what must be done to bring about a unitary system were outlined. They were stated in terms of eliminating the racial identification of the schools in a dual system in six particulars: composition of student bodies, faculty, staff, transportation, extracurricular activities, and facilities. ... It was such dual systems, organized and operated by the states acting through local school boards and school officials, which were held unconstitutional in *Brown* v. *Board of Education,* 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (Brown I), and which were ordered abolished in *Brown* v. *Board of Education,* 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (Brown II).
>
> "In *Green* the court spoke in terms of the whole system—of converting to a unitary, nonracial school system from a dual system. Then, in *Alexander* v. *Holmes County Board of Education,* ... the court pointed to the end to be achieved. The result, if a con-

stitutionally acceptable system may be said to exist, must be that the school system no longer operates as a dual system based on race or color but as a 'unitary school . . . [system] within which no person is to be effectively excluded from any school because of race or color.' . . . " —— F.2d at p. ——.

We thus proceed to a determination of the status of the Mobile system with respect to each of the six essential elements which go to disestablish a dual school system.[1] We find the system deficient in student assignment in certain schools and also in faculty and staff assignment.

The Mobile system covers the whole of Mobile County including the City of Mobile. The county is quite large in area, embracing 1,222 square miles. There are a total of 96 schools in the system in 91 buildings, and the 96 schools consist of senior high, junior high, and elementary schools plus one special school. Some of the buildings house separate elementary or junior high or high schools; others house combinations of these. There were 73,504 students in the system as of September 26, 1969. This total breaks down into 42,620 or 58 per cent white students, 30,884 or 42 per cent Negro students. Under the present plan 18,623 or 60 per cent of the Negro students in the system are as-

[1] Under the stringent requirements of *Alexander* v. *Holmes County Board of Education*, supra, which this court has carried out in *United States* v. *Hinds County School Board*, 5 Cir., 1969, 417 F.2d 852 [Nos. 28030, 28042, Nov. 7, 1969], this court has judicially determined that the ordinary procedures for appellate review in school segregation cases have to be suitably adapted to assure that each system, whose case is before us, "begin immediately to operate as unitary school systems." Upon consideration of the record, the court has proceeded to dispose of this case as an extraordinary matter. Rule 2, FRAP.

signed to schools having all or virtually all Negro student bodies. These Negro students are housed in 12 elementary, 3 junior high schools, 1 combination junior-senior high, and 3 senior high schools.

Faculty and Staff

The faculty and staff desegregation standard enunciated in *Singleton* v. *Jackson*, supra, requires assignment on a basis whereunder the ratio of Negro to white teachers and staff members in each school is substantially the same as each such ratio is to teachers and staff in the entire school system. The faculty ratio for the system is approximately 60 per cent white and 40 per cent Negro. As of April 7, 1970, there were 1,642 white faculty members and 1,098 Negro members or a total of 2,740. We have no information on staff ratios.

The Mobile County school system has almost totally failed to comply with the faculty ratio requirement although ordered to do so by the district court on August 1, 1969. Only a few schools approach the 60-40 faculty ratio. The district court is directed to require strict compliance with the *Singleton* v. *Jackson* rule for faculty and staff on or before July 1, 1970.

Transportation, Facilities and Extracurricular Activities

In the 1967-68 school term, 207 school buses transported 22,094 students daily. The facts disclose that school buses are used in all rural areas of the county and in the outlying areas of metropolitan Mobile and that they are operated on a non-segregated, non-discriminatory basis. The facts

also demonstrate that all extracurricular activities and facilities are operated on the same basis. Indeed, there is no complaint regarding transportation, facilities and extracurricular activities. The district court is directed to enter an order requiring the continued desegregation of facilities and extracurricular activities and to include the requirements of *Singleton* v. *Jackson*, supra, as to transportation, school construction and school site selection as a part of the order.

STUDENT ASSIGNMENT

We have examined each of the plans presented to the district court in an effort to determine which would go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept of the school system. Unlike Orange County (*Ellis* v. *Orange County*, supra), Mobile does not purport to use the strict neighborhood assignment system. It employs zones based on discretionary zone lines. In that sense it is like the Hillsborough County system (*Mannings* v. *Hillsborough County*, supra), and the situation, as in Hillsborough, can be greatly improved by pairing some schools located in close proximity to each other. See the description of neighborhood pairing used in *Mannings* v. *Hillsborough County*. The situation can also be improved by recasting the grade structure in some of the buildings but, at the same time, maintaining the neighborhood school concept.

The plan submitted by the Department of Justice on January 27, 1970, contemplates both pairing and the recasting of grades. It produces a result of 9 all or virtually all Negro student body elementary schools instead of 12

as at present, and 1 senior high school of the same type instead of 7 junior and senior high schools as at present. Instead of 60 per cent of the Negro students being assigned to such schools, the result under the Department of Justice plan would be 28 per cent (8,515 students instead of 18,623). Every Negro child would attend an integrated school at some time during his education career under the Department of Justice plan.

The result to be achieved under this plan proves an obvious fact. Ordinarily, it is easier to desegregate high and junior high schools than elementary schools. This is due to the difference in the size of the schools. Elementary schools are generally smaller and thus they receive students from a more restricted area. On the other hand, high and junior high schools, with their large student capacities, encompass larger areas and, more likely, areas containing diverse racial groups.

We conclude that the Department of Justice plan, as hereinafter modified, must be invoked. By way of modification, it will be necessary to desegregate the one all Negro high school—Toulminville. It appears from maps of record that the zone line between Murphy high and Toulminville high can be redrawn so as to include some of the students living in the area of the Crichton elementary school. Some of these students appear to reside nearer Toulminville than Murphy. In addition, the Department of Justice plan must be modified to close the Emerson elementary school (soon to be eliminated in an urban renewal project). This school would have an all Negro student body under the Justice Department plan. The 450 students who would be assigned to Emerson are to be assigned as follows: 200 to Council, 200 to Caldwell, and 50 to Lienkauf.

This will leave only 8 all Negro student body schools (all elementary), with 25 per cent of the Negro students assigned thereto (7,725 instead of 18,623), and every Negro child in the Mobile system will attend school in a desegregated junior high and high school on a neighborhood basis.[3]

Attached as Appendix A is a chart depicting student body composition by school and race under the present district court plan and the Department of Justice plan of January 27, 1970.[4] The district court is directed to im-

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[3] The Department of Justice plan coupled with the Toulminville and Emerson feature seems superior to the HEW plans. Any one of the plans, HEW or Department of Justice as modified, would lead to a unitary system. The original HEW plan (Plan B), filed on July 10, 1969, principally utilized zoning, but also proposed transporting approximately 2,000 Negro students from the heavy Negro concentration in eastern Mobile to predominantly white schools in the western and southern part of Mobile. It did not contemplate transporting white students in exchange. This plan would retain 6 all Negro schools serving 5,949 Negro students, or 19 per cent of the total Negro students in the system. HEW Plan B-alternative, filed December 1, 1969, employed contiguous zoning as well as contiguous pairing. The plan contemplated no transportation of students. It would leave 9 all Negro schools serving 7,971 students, or 26 per cent of the total. HEW Plan B-1-alternative, filed December 1, 1969, was limited to elementary schools and incorporated Plan B-alternative for junior and senior high schools. The plan involves non-contiguous pairing of each all Negro school in eastern Mobile with a predominantly white school in western or southern Mobile (across the system). The plan calls for cross-transportation of both whites and Negroes. There would be no all Negro schools under this plan. This non-neighborhood plan is euphemistically referred to in plaintiff's brief as a "Shared Neighborhood Plan."

[4] The defendants warn that the figures used by the Department of Justice and HEW are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district court. Such errors in information as do exist may be corrected and the situation adjusted accordingly by the district court.

plement the Department of Justice plan on or before July 1, 1970 together with the Toulminville-Murphy and Emerson changes above described.

From the standpoint of demography, a majority of the Negro population in the Mobile school system is situated in a concentrated area within the City of Mobile to the east of Highway I-65. The all Negro student body schools which will be left after the implementation of the Department of Justice plan as modified, are the result of neighborhood patterns. This condition can be further alleviated through a majority to minority transfer policy and through the functioning of a bi-racial committee. The student assignments in the school system depend on zone lines which are drawn on a discretionary basis and therefore may be subject, in some instances, to abuse and in others, to improvement. The proper administration of zone lines depends upon good faith in establishing and maintaining the lines as well as continuing supervision over them.

The district court is directed to see that a bi-racial committee of the type described in *Ellis* v. *Orange County*, supra, is established. See *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1970, —— F.2d —— [No. 29226, slip opinion dated May , 1970]. In addition, the district court is directed to require the majority to minority transfer rule of *Ellis* v. *Orange County*. All transferring students must be given transportation if they desire it and the transferee is to be given priority for space.

The district judge is also directed to require that the bi-racial committee serve in an advisory capacity to the school board in the areas of the operation of the majority to minority transfer rule, the promulgation and maintenance of zone lines, and in school site location. As we said

in *Ellis* vs. *Orange County*, with respect to eliminating all Negro student body schools:

> " . . . The majority to minority transfer provision under the leadership of the bi-racial committee is a tool to alleviate these conditions now. Site location, also under the guidance of the bi-racial committee, will guarantee elimination in the future. In addition, open housing, Title VIII, Civil Rights Act of 1968, 42 USCA, § 3601, et seq., *Jones* v. *Mayer*, 1968, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189, will serve to prevent neighborhood entrapment."

Deficiencies to Be Remedied

We conclude that three of the six elements that go to make up a unitary system have been accomplished in Mobile County: transportation, extracurricular activities, and facilities. The remaining deficiencies in faculty and staff desegregation and in student assignment must be remedied on or before July 1, 1970 on the basis heretofore stated. All other direction herein given to the district court must also be accomplished not later than July 1, 1970.

Once done, and when the district court, by the standards herein stated, has made its own conclusion as to the system being unitary, the district court must retain jurisdiction for a reasonable time to insure that the system is operated in a constitutional manner. As the Supreme Court said in *Green*, " . . . whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed." 391 U.S. at 439.

Reversed and Remanded with direction.

APPENDIX "A"

COMPARISON OF DEPARTMENT OF JUSTICE PLAN WITH DISTRICT COURT PLAN

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*		
ELEMENTARY SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
South Brookley	1-6	502	71	1-6	484	76
Morningside	1-5	631	0	1-5	751	0
Williams	1-6	571	43	1-6	554	60
Maryvale	1-5	414	117	1-5	453	171
Mertz	1-5	498	104	1-5	453	0
Craighead	1-5	347	489	1-5	290	569
Arlington	1-5	160	170		- closed -	
Council	1-5	4	391	1-5	2	548
*Emerson	1-5	0	450		- closed -	
Lienkauf	1-5	273	165	1-5	224	235
Woodcock	1-5	424	167	1-5	193	186

		Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*	
ELEMENTARY SCHOOLS — cont.						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Westlawn	1-5	532	0	1-6	541	0
Crichton	1-5	438	348	1-6	457	240
Old Shell Road	1-5	232	295	1-6	267	106
Caldwell	1-5	0	350	1-6	20	390
Howard		- closed -		1-6	12	432
Owens	1-5	2	1414	1-6	0	1121
Fonvielle	1-5	0	1000	1-6	4	1163
Stanton Road	1-5	6	900	1-6	6	976
Gorgas	1-5	7	963	1-6	4	1168
Brazier	1-5	10	1022	1-5	0	955
Grant	1-5	15	1285	1-5	0	1231
Palmer/Glendale	1-5	434	931	1-5	66	600
Glendale/Palmer	1-5	434	931	1-5	385	192
Whitley	1-5	216	481	1-5	0	383
Robbins/Hamilton	1-5	638	855	1-5	0	859

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			Assignments Under District Court Plan of 1/31/70		
ELEMENTARY SCHOOLS — cont.						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Hamilton/Robbins	1-5	638	855	1-6	622	0
Chickasaw	1-5	473	100	1-6	495	3
WEST OF I-65						
Whistler	1-5	181	205	1-6	227	231
Thomas	1-5	180	95	1-6	222	101
Indian Springs	1-5	535	11	1-6	520	12
Eight Mile	1-6	280	66	1-8	586	110
Shepard	1-6	409	29	1-6	409	29
Dodge	1-6	675	65	1-6	675	65
Austin	1-6	396	22	1-6	396	22
Fonde	1-6	679	11	1-6	679	11
Dickson	1-6	835	193	1-6	835	193
Orchard	1-5	754	113	1-5	754	113
Will	1-5	657	175	1-5	657	175
Forest Hill	1-5	560	0	1-5	560	0

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*		
MIDDLE SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Rain	7-12	1150	97	7-12	1089	112
Eanes/Hall	6-9	1292	977	6-8	978	280
Hall/Eanes	6-9	1292	977	6-8	180	838
Phillips/Washington	6-9	1170	1716	7-8	691	179
Washington/Phillips	6-9	1170	1716	7-9	0	1463
Dunbar	6-9	181	985	7-8	5	738
Central	6-9	468	1206	9-12	0	1233
Mobile Co. Training	6-7	432	859	6-12	57	1125
Prichard	6-7	240	410	6-8	299	201
Trinity Gardens	6-7	380	690	6-8	0	996
Clark	8	536	948	7-9	1080	290
WEST OF I-65						
Azalea Road	7-8	1039	38	7-8	1039	38
Scarbrough	6-8	638	77	6-8	638	77
Hillsdale	6-8	431	217	6-8	431	217

	Projected Enrollment Under Zones Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*		
HIGH SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Rain	7-12	1150	97	7-12	1089	112
Williamson	10-12	880	471	9-12	472	383
Murphy	10-12	1643	1761	9-12	2340	513
**Toulminville	10-12	9	740	10-12	0	1125
Blount/Carver	9-12	854	1846	9-12	8	1818
Carver/Blount	9-12	854	1546	6-8	1	899
Vigor/Bienville	9-12	1134	1211	9-12	1447	439
Bienville/Vigor	9-12	1134	1211	1-6	288	313
WEST OF I-65						
Davidson	9-12	2302	72	9-12	2296	72
Shaw	9-12	1250	240	9-12	1242	237

* An optional provision of the Department of Justice plan called for closing all Negro Emerson elementary school and assigning its 450 students to six non-contiguous schools: Maryvale, Woodcock, Westlawn, Fonde, Morningside, and Lienkauf. This option is eliminated. As modified by the court, the students who would attend Emerson will, instead, attend Council, Caldwell and Lienkauf. Council will have 4 white and 591 Negro students, Caldwell will have 550 Negro students, and Lienkauf will have 273 white and 215 Negro students.

** To be rezoned and integrated (see modification in text).

Court of Appeals Judgment of June 8, 1970

Before BELL, AINSWORTH and GODBOLD, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was taken under submission by the Court upon the record and briefs on file;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded with direction to the said District Court in accordance with the opinion of this Court.

It is further ordered that defendants-appellees-cross appellants and intervenor-appellees pay the costs on appeal to be taxed by the Clerk of this Court.

June 8, 1970

Issued as Mandate: Jun 8 1970

District Court Order of June 12, 1970

Pursuant to the mandate of the Fifth Circuit Court of Appeals dated June 8, 1970, and received by this court on June 10, 1970, which reverses and remands with directions, this Court's desegregation plan for the Mobile County Public School System of January 31, 1970, and after consideration of such mandate, it is hereby ORDERED, ADJUDGED and DECREED by the Court that the defendants, Mobile County School Board, implement the desegregation of the Mobile County Public School System on or before July 1, 1970, as follows:

STUDENT ASSIGNMENT

It is ORDERED that those area attendance zones offered by the United States Justice Department on January 27, 1970, be assigned as the school zones under which the public school system will operate beginning with the 1970 Fall semester until further orders of this Court. The school board is directed to begin preparation and implementation of such area school zones immediately with the following exceptions: Toulminville High School attendance zone area and the Emerson Elementary School area shall be drawn by the Court and the Court shall submit this order within the immediate future. The school board is directed to furnish to the Court on Tuesday, June 16, 1970, the pupil population data for the Emerson Elementary and Toulminville High School attendance area including grade attendance and enrollment. Other than the above referenced attendance areas, the Justice Department attendance zones as drafted on January 27, 1970, shall be implemented as drafted.

District Court Order of June 12, 1970

FACULTY AND STAFF DESEGREGATION

On or before July 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. Under the present faculty employment the racial composition of Mobile County School system is approximately 60% white and 40% Negro; therefore, in accordance with the above stated policy it shall be necessary for the school faculty assignments to be made on a 60% white and 40% Negro basis. Beginning the 1970 Fall semester, the school board shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

Paragraph 7 of this Court's decree entered on August 1, 1969, pertaining to faculty reduction, vacancies and demotion are incorporated herein and shall remain in full force and effect.

MAJORITY TO MINORITY TRANSFER POLICY

The school board shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority

and all such transferring students must be given transportation to their chosen school if they desire it and the transferee is to be given priority for space.

TRANSPORTATION, EXTRA CURRICULAR ACTIVITIES AND FACILITIES

The School Board is directed to continue to operate transportation, extra curricular activities and school facilities on a non-discriminatory basis in accordance with the past orders of this Court.

By supplemental order to be entered within the immediate future the Court shall direct that there be established a biracial committee serving in an advisory capacity to the school board in the following areas of the public school system operations: (1) Application of majority to minority transfer rule; (2) promulgation and maintenance of area within zone lines; (3) school site location.

DONE THIS THE 12th day of June 1970.

DANIEL H. THOMAS,
United States District Judge.

Court of Appeals Orders of June 29, 1970

Before BELL, AINSWORTH, and GODBOLD, *Circuit Judges.*

IT IS ORDERED that appellees' motion for leave to file petition for rehearing out of time and leave to file petition for rehearing in excess of 10 pages but not to exceed 20 pages is hereby GRANTED.

It is ORDERED that the petition for rehearing filed in the above entitled and numbered cause be, and the same is hereby

DENIED.

District Court Order of July 13, 1970

The Order of this Court entered in this case on June 12, 1970, is amended in the following respect:

Pursuant to Footnote "4" of the opinion of the Fifth Circuit Court of Appeals in this case, entered on June 8, 1970, the area attendance zones for the 1969-70 school year are amended as shown by the maps hereto attached marked Exhibit "1", "2", and "3" for the elementary school, middle school and high schools respectively, which said maps show the area attendance zone for each school and the grade structure for each school.

Exhibit "4" attached hereto shows the feeder pattern for the entire school district. The facility heretofore known as the Gorgas School is closed and the students heretofore attending Gorgas are assigned to Fonville. In all other respects the Order of June 12, 1970, remains in full force and effect.

Done this, the 13th day of July, 1970.

DANIEL H. THOMAS,
United States District Judge.

[Maps omitted—see original record]

District Court Order of July 13, 1970

(See opposite) ☞

District Court Order of July 13, 1970

EXHIBIT "4"

Feeder pattern

Elementary	Middle	High
Crichton		
Stanton Road	Phillips	Toulminville.
Dodge		
Shepard		
Forde		
Dickson	Azalea Road	Davidson
Austin	Scarborough	Davidson
Forest Hill		
Orchard [1]	Scarborough	Shaw
Orchard [1]		
Wil	Hillsdale	Shaw
Williams		
South Brookley	B. C. Rain	B. C. Rain
Morningside		
Maryvale	Eanes	
Craighead		Williamson
Arlington		
Council	Hall	Williamson
Caldwell		
Leinkauf	Dunbar	
Owens [2]		Murphy
Old Shell		
Woodcock [3]	Central	Murphy
Fonville		
West Lawn		
Mertz	Washington	
Bratier		
Thomas	Trinity Gardens	Blount
Whistler		
Robbins (Northern)		
Hamilton		
Chickasaw Southern)	Clark	Vigor
Robbins (Southern)		
Chickasaw (Northern)		
Grant (Western)	Clark	Blount
Glendale (Western)		
Palmer (Western)		
Grant (Eastern)	Prichard	Vigor
Palmer (Eastern)		
Whitley	Mobile County Training	Vigor
Glendale (Eastern)		
Eight Mile	Eight Mile	Blount
Indian Springs (Eastern)	Eight Mile	Blount

[1] Students in the eastern section of the Orchard Elementary attendance area will attend Scarborough Jr. High. Those in the western and southern sections will attend Hillsdale.

[2] With some exceptions (see maps) students in the southeast section of the Owens Elementary attendance area will attend Dunbar Middle School.

[3] Students in the eastern section of the Woodcock Elementary attendance area will attend Dunbar Middle School.

District Court Order of July 30, 1970

Since the Court's order of July 13th fixing attendance area zones, the Court has detected areas which necessitate changes being made. In one particular area, namely, Dodge School, under the order of the 13th, children in Grades 1-6 were assigned to the Dickson School who had previously been assigned to Dodge School. Both schools are predominantly white and the children involved are predominantly white. In order for these children to get to Dickson some would have to travel 9.7 miles and the closest of this group would have to travel five or six miles. In order to get to Dodge School the most these children would have to travel is not more than two to two and one-half miles. Under the Court's order of the 13th, Dodge School would be substantially under capacity, and Dickson, slightly under capacity. Consequently, the northern boundary of the Dodge School attendance zone and the southern boundary of the Dickson School attendance zone are moved northward as shown on the amended Elementary Attendance Zone map hereto attached.

In the July 13th area attendance zone map, the northern boundary of Westlawn was at Emogene Street, which would necessitate the children in Grades 1-5 to attend Crichton School. In order to reach Crichton, it would necessitate crossing dangerous thoroughfares and to travel a much greater distance than if they were to attend Westlawn. Consequently, the southern boundary of the Crichton attendance zone is moved northward from Emogene to Dauphin Street.

Since the July 13th order, the School Board has suggested certain changes. All of these the Court has seri-

ously considered and feels that some changes should be made. While some of these suggested changes, to a slight extent, disrupt feeder patterns which the Court had established, nevertheless, in most instances they assign children closer to their home and make travel less difficult. Consequently, the Court alters its area attendance zones filed with its July 13, 1970, order as shown by maps hereto attached. These changes in the Court's opinion have no racial significance, but bring about a substantial improvement over the plan filed on the 13th.

DONE at Mobile, Alabama, this the 30th day of July 1970.

DANIEL H. THOMAS
United States District Judge

[Maps omitted—see original record]

Court of Appeals Opinion of August 4, 1970

Before BELL, AINSWORTH, and GODBOLD, *Circuit Judges.*

BELL, *Circuit Judge*: We consider again the Mobile School case. This time it comes to us on a motion for injunctive relief pending application for certiorari; or in the alternative, that we vacate the order of the district court entered on July 13, 1970 in implementation of our decision of June 8, 1970 as to student assignment. We deny injunctive relief and modify the order of July 13, 1970. In addition, we require that a biracial advisory committee to the school board be established forthwith.[1]

It will be necessary to review the action in the district court since the issuance of the mandate of this court pursuant to our decision of June 8, 1970. The appeal which gave rise to that decision came to us in the posture of the Mobile school system being operated in an unconstitutional manner with respect to faculty and staff as well as student assignment. We reversed with direction. The direction was to order that the faculty and staff ratio which was decreed in *Singleton* v. *Jackson*, 5 Cir., 1969, 419 F.2d 1211 (en banc consideration of Mobile and 12 additional school desegregation cases), be effected throughout the system. We also directed that the majority to minority transfer provision of *Ellis* v. *The Board of Public Instruction of Orange County, Florida*, 5 Cir., 1970, —— F.2d —— [No. 29,124, slip opinion dated February 17, 1970], be required.

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[1] We treat this motion as a part of the previous appeal since the relief sought goes to the efficacy of the mandate of this court. For such purposes and so that our previous mandate may be amended, the mandate of the court is recalled.

The district court carried out this direction explicitly in an order dated June 12, 1970.

We also directed that a bi-racial committee be established to advise with the school board, and that stated duties be assigned the bi-racial committee. The district court stated in the order of June 12, 1970 that a supplemental order would be entered to effectuate this direction. Appellants state that the bi-racial committee has not been established.

With respect to the student assignment plan as revised by the district court in its order of July 13, 1970, some background is necessary. The case came to us with 60 per cent or 18,623 of the total of 30,884 Negro students assigned to 19 all Negro or virtually all Negro student body schools. We studied the several proposed student assignment plans in the record on appeal and concluded that the Department of Justice plan would disestablish the dual school system if modified in some particulars. Under that plan, as modified by us, the Mobile school system would open in September 1970 with no all Negro or virtually all Negro high or junior high schools and with only 8 all Negro elementary schools. The number of Negro students attending these all Negro or virtually all Negro student body schools was reduced from 18,623 to 7,725 or 25 per cent of the total, and these in grammar schools only. Every Negro child would receive an integrated junior high and high school education.

In addition to directing that the district court draw a new zone line so as to desegregate Toulminville High School (all Negro), we recognized the possibility of the figures on which we relied being inaccurate. In footnote 4 we said:

Court of Appeals Opinion of August 4, 1970

"The defendants warn that the figures used by the Department of Justice and HEW are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district court. Such errors in information as do exist may be corrected and the situation adjusted accordingly by the district court."

It developed on remand that there were inaccuracies. For example, according to the order of the district court dated July 13, 1970 (chart attached to order showing racial composition and capacity of schools, reproduced infra), our plan made no provision for the 6th grade children in the Indian Springs school. Our plan, which was based on the plans of record, was also in error in some instances as to school capacity, i.e., the schools would not accommodate the numbers contemplated. In this connection we assigned 2,886 students to Phillips Junior High which has a permanent capacity of 980. There were other such errors but not of this magnitude. We knew that some of the schools had portable class rooms but the record did not disclose the number.

At any rate, our view was and is that the exigencies of the situation required that this court promulgate a plan of student assignment meeting constitutional standards for immediate implementation rather than to continue the backing and filling which is inherent in the appellate and remand process, and which had been demonstrated by the many previous appeals of this matter including two during

the 1969-70 school term. We consider school desegregation cases as presenting important public questions deserving of decision and facilitation in the most expeditious manner within the limits of due process and judicial propriety.

It was never our thought, although appellants seem to think otherwise, that the district court was stripped of its discretion to adjust the assignment plan to the end of making it workable. The district court could not, of course, make changes which would diminish the plan from the standpoint of constitutionality nor diminish the extent of the desegregation required by this court.

Indeed, immediately upon receipt of our decision, the defendant school board moved for rehearing on the ground that it was not possible to implement the plan of the decision, pointing to several errors. The motion was denied, the court being of the opinion that such problems or errors as might exist in the plan were for adjustment by the district court.

We turn then to the plan as revised by the district court to determine if the revisions amount to an improper departure from our decision. As stated, the plan of this court left 8 all Negro or virtually all Negro schools (all elementary), with 25 percent of the Negro student population assigned to them. The district court reduced the number of such schools to 7, with a total of 6,085 students or 19 per cent of the Negro student population assigned to them. One of these, the Council school, which is considered by us as virtually all Negro, is to have 40 white students assigned along with 427 Negro students whereas in our plan only 4 whites were to be so assigned.

The district court proceeded from the standpoint of the zoning of the whole district. We considered only that portion of the system east of Highway I-65 except where necessary to go to the west to aid in reducing the number of all Negro schools. The problem was that a majority of the Negro population was concentrated within the city to the east of I-65. In revising our plan, the district court finalized the zoning for the entire system including elementary, junior high and high schools. The feeder system outlined in its order of July 13, 1970 is based on the school zone lines and is nothing more. It is in no way a departure from the applicable zones.

The differences between the plan contained in our June 8, 1970 opinion and the revised district court plan are reflected in the following charts which are a part of the order of the district court of July 13, 1970:

HIGH SCHOOL

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
Rain	7-12	1143	112	1150	97	1255	868
Williamson	10-12	824	491	880	471	1315	1305
Murphy	10-12	1300	1027	1643	1761	2327	2813
Toulminville	10-12	247	420	9	740	667	609
Blount-Carver	9-12	1022	1693	854	1846	2715	2697
Vigor-Bienville	9-12	1000	1425	1134	1211	2425	2204
Shaw	9-12	1312	237	1250	240	1549	1015
Davidson	9-12	2201	80	2302	72	2281	1943

MIDDLE SCHOOL

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
B. C. Rain	7-12	1143	112	1150	97	1255	868
Banes	6-9	770	220	1292	977	990	1148
Hall	6-9	336	910	1292	977	1246	1224
Dunbar	6-9	170	770	181	985	947	1064
Central	6-9	387	1164	468	1260	1551	1508
Washington	6-9	748	709	1170	1716	1457	1015
Phillips	6-9	417	695	1170	1716	1112	980
Trinity Gardens	6-8	320	540	380	690	861	868
Prichard	6-8	220	458	240	410	678	615
Mobile County Training	6-8	333	885	432	859	1218	1232
Clark	6-8	703	846	536	948	1549	1392
Scarborough	6-8	884	11	638	77	895	896
Hillsdale	6-8	451	210	431	217	661	784
Azalea Road	7-8	996	38	1039	38	1034	986
Eight Mile*	1-8	549	110	280*	66*	659	598

*District Court plan grade structure is 1-8 and the Fifth Circuit's Plan grade structure is 1-6.

ture is 1-6.

ELEMENTARY SCHOOL

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
South Brookley	1-6	490	71	502	71	561	408
Williams	1-6	561	45	571	43	606	408
Morningside	1-5	672	0	631	0	672	544
Maryvale	1-5	402	257	441	117	659	544
Craighead	1-5	300	506	347	489	806	850
Council	1-5	40	427	4	391	467	544
Arlington	1-5	163	178	160	170	341	476
Caldwell	1-5	87	431	0	350	518	510
Leinkauf	1-5	118	393	273	165	511	442
Owens	1-5	2	1300	2	1414	1302	1428
Old Shell Road	1-5	482	7	332	295	489	476
Woodcock	1-5	255	0	424	167	255	570
Mertz	1-5	415	110	498	104	525	510
Fonville	1-5	37	787	0	1000	824	1088
Westlawn	1-5	384	0	532	0	384	510

ELEMENTARY SCHOOL (Continued)

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
Crichton	1-5	379	329	438	348	708	714
Stanton Road	1-5	5	826	6	900	831	1020
Frazier	1-5	0	1120	10	1022	1120	1156
Grant	1-5	30	850	15	1285	880	1122
Glendale	1-5	65	480	434	931	545	884
Palmer	1-5	235	435	434	931	670	568
Whitley	1-5	261	314	216	481	655	578
Robbins***	1-5	0	775	638	855	775	850
Hamilton***	1-5	630	15	638	855	645	646
Thomas	1-5	180	95	180	95	275	272
Whistler	1-5	181	205	181	205	386	510
Chickasaw	1-5	443	0	473	100	443	612
Eight Mile*	1-8	549	110	280	66*	659	598
Indian Springs**	1-6	445	15	535	11	460	408
Orchard	1-5	714	161	754	113	875	816

ELEMENTARY SCHOOL (Continued)

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
Forest Hill	1-5	624	0	560	0	624	578
Will	1-5	534	299	657	175	833	816
Austin	1-5	488	10	396	22	498	408
Dickson	1-6	726	5	835	193	731	782
Fonde	1-6	773	13	679	11	786	850
Shepard	1-6	415	29	409	29	444	544
Dodge	1-6	503	50	675	65	553	816
Corgas	CLOSED						

* District Court plan grade structure is 1-8 and the Fifth Circuit plan is grade structure 1-6.

** Fifth Circuit plan made no provision for 6th grade at Indian Springs.

***These schools will be integrated by pairing. (discussed hereinafter)

Court of Appeals Opinion of August 4, 1970

We approve the plan as revised by the district court with one exception. The plan of this court required the pairing of Palmer and Glendale, Robbins and Hamilton, and Eanes and Hall. The latter two are junior high schools. The district court plan eliminates this pairing requirement. This is proper except as to Robbins and Hamilton. These schools are contiguous; Robbins continues with an all Negro student body while Hamilton is predominantly white. The district court is directed to amend its plan so as to pair these two schools. This will reduce the number of all Negro student body schools to 6 with a total of 5,310 or 17 per cent of the total Negro student population assigned to such schools. Thus it is that with this modification of the district court plan, the revised plan achieves an improved result.

We are left with the feeling that this case would not again be here if the revisions had been considered by a bi-racial advisory committee. We directed in our decision of June 8, 1970 that the promulgation and maintenance of zone lines be a matter, among others, for consideration by the bi-racial committee.

The motion of appellants for an order that the district court be required forthwith to carry out our direction to establish a bi-racial committee is granted.

The motion of appellants to vacate the order of July 13, 1970 of the district court is denied subject however to it being amended as stated herein by pairing Robbins and Hamilton.

The motion to implement the student assignment plan set out in our decision of June 8, 1970 is denied in light of the fact that we have now approved an improved plan

which the district court is directed to effectuate upon receipt of the mandate of this court.

The motion to retain jurisdiction in this court with the district court to be used as a special master, cf. *Alexander* v. *Holmes County*, 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19; *United States* v. *Hinds County*, 5 Cir., 1969, 417 F.2d 852, is denied. Such a procedure seems unnecessary in view of the expedited appellate procedures now applicable in this circuit. See *Singleton* v. *Jackson*, supra, 419 F.2d at 1222, and the procedure outlined in footnote 2 to our decision in this matter of June 8, 1970.

This opinion and order amends and supplements our decision and order of June 8, 1970, and together, they shall be considered the final order on this appeal for mandate and certiorari purposes.

Meanwhile, the district court is to proceed to carry out the mandate of this court to the end of converting the dual school system of Mobile County into a unitary system as directed notwithstanding any application for certiorari.

Projected Enrollment Data for Elementary, Middle and High Schools Broken Down as to U. S. District Court Plan Under Order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan Under Order of 7/30/70, Filed August 20, 1970

(See opposite) ☞

Projected Enrollment Data for Elementary, Middle and High Schools Broken Down as to U. S. District Court Plan Under Order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan Under Order of 7/30/70, Filed August 20, 1970

ELEMENTARY SCHOOLS

NAME OF SCHOOL	GRADE	7/13/70 U.S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		7/30/70 U.S. DIST. COURT PLAN	
		WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO
outh Brookley	1-6	490	71	502	71		
Williams	1-6	561	45	571	43		
Morningside	1-5	672	0	631	0		
Maryvale	1-5	402	257	441	117		
Craighead	1-5	300	506	347	489	290	521
Council	1-5	40	427	4	391	2	560
Arlington	1-5	163	178	160	170	CLOSED	
Baldwell	1-5	87	431	0	350	15	455
Leinkauf	1-5	118	393	273	165	210	170
Ayers	1-5	2	1300	2	1414	1	1242
Old Shell Road	1-5	482	7	332	295		
Woodcock	1-5	255	0	424	167	200	134
Herts	1-5	415	110	498	104		
Pinville	1-5	37	787	0	1000	23	920
Westlawn	1-5	384	0	532	0	486	0
Trichton	1-5	379	329	438	348	390	220
Stanton Road	1-5	5	826	6	900	4	916
Frazier	1-5	0	1120	10	1022		
Grant	1-5	30	850	15	1285	11	955
Glendale	1-5	65	480	434	931	208	554
Palmer	1-5	235	435	434	931	56	546
Whitley	1-5	261	314	216	481	270	352
Robbins	1-5	0	775	638	855		
Hamilton	1-5	630	15	638	855	578	17
Thomas	1-5	180	95	180	95		
Thistler	1-5	181	205	181	205	169	200
Chickasaw	1-5	443	0	473	100		
Eight Mile*	1-8	549	110	280	66		
Indian Springs**	1-6	445	15	535	11		
Orchard	1-5	714	161	754	113	756	117
Forest Hill	1-5	624	0	560	0	519	0
Hall	1-5	534	299	657	175	647	175
Austin	1-5	488	10	396	22	397	20
Dickson	1-6	726	5	835	193	618	193
Fonde	1-6	773	13	679	11	760	12
Shepard	1-6	415	29	409	29	415	29
Dodge	1-6	503	50	675	65	666	66
Gorgas	C L O S E D						

*District Court plan grade structure is 1-8 and Fifth Circuit plan is grade structure 1-6.

**Fifth Circuit plan made no provision for 6th grade at Indian Springs

Projected Enrollment Data for Elementary, Middle and High Schools Broken Down as to U. S. District Court Plan Under Order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan Under Order of 7/30/70, Filed August 20, 1970

MIDDLE SCHOOLS

NAME OF SCHOOL	GRADE	7/13/70 U.S. District Court Plan		Fifth Circuit Plan		7/30/70 U. S. District Court Plan	
		WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO
B. C. Rain	7-12	1143	112	1150	97		
Eanes	6-9	770	220	1292	977		
Hall	6-9	336	910	1292	977	440	490
Dunbar	6-9	170	770	181	985	133	922
Central	6-9	387	1164	468	1260	241	1389
Washington	6-9	748	709	1170	1716		
Phillips	6-9	417	695	1170	1716		
Trinity Gardens	6-8	320	540	380	690	125	747
Prichard	6-8	220	458	240	410		
Mobile County Training	6-8	333	885	432	859		
Clark	6-8	703	846	536	948	746	855
Scarborough	6-8	884	11	638	77		
Hillsdale	6-8	451	210	431	217		
Azalea Road	7-8	996	38	1039	38		
Eight Mile	1-8	549	110	280*	66*		

*District Court plan grade structure is 1-8 and the Fifth Circuit's plan grade structure is 1-6.

7/94

Projected Enrollment Data for Elementary, Middle and High Schools Broken Down as to U. S. District Court Plan Under Order of 7/13/70; Fifth Circuit Plan; and U. S. District Court Plan Under Order of 7/30/70, Filed August 20, 1970

HIGH SCHOOLS

NAME OF SCHOOL	GRADE	7/13/70 U.S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		7/30/70 U.S. DISTRICT COURT PLAN	
		WHITE	NEGRO	WHITE	NEGRO	WHITE	NEGRO
ain	7-12	1143	112	1150	97		
illiamson	10-12	824	491	880	1315		
rphy	10-12	1300	1027	1643	1761		
lminville	10-12	247	420	9	740		
ount	9-12	1022	1693	854	1846	784	2050
gor	9-12	1000	1425	1134	1211	1238	1095
w	9-12	1312	237	1250	240		
vidson	9-12	2201	80	2302	72		

Court of Appeals Opinion of August 28, 1970

Before

BELL, AINSWORTH, and GODBOLD,
Circuit Judges.

By the Court:

This court mandated a plan of pupil assignment for the Mobile school district in its order of June 8, 1970. This plan was modified by the district court in its order dated July 13, 1970. The district court further modified the plan in an order dated July 30, 1970. On August 4, 1970, we substantially affirmed the modifications made in the assignment plan by the July 13, 1970 order of the district court. We did not have the changes embraced in the July 30, 1970 order before us at the time. Plaintiffs-appellants have now appealed from the July 30, 1970 order.

The July 30, 1970 order makes changes in the attendance zones of 32 separate schools. Some of the changes had no effect from the standpoint of desegregation. Others diminished the degree of desegregation accomplished in the prior orders of this court and the district court. Most of the changes can be affirmed on the basis of efficient school administration and because there is no claim of a racially discriminatory purpose. It is clear that some of the other changes cannot be affirmed and that time is of the essence in resolving the controversy which has arisen over the July 30, 1970 changes in light of the short time before school is to commence in Mobile.

The court has considered the motion for summary reversal, the memoranda in support of and opposition there-

to, and in addition, a pre-hearing conference with counsel has been conducted by Judge Bell for the court pursuant to Rule 33, FRAP. After due consideration, the appeal is terminated on the following basis:

(1) The middle school and high school zone lines shall be the same as those set forth in the July 13, 1970 order of the district court.

(2) The elementary school zones shall be modified as follows:

(a) Palmer and Glendale schools shall be paired.

(b) Council and Leinkauf schools shall be paired.

(c) The area of the Whitley zone as described in the July 30, 1970 order of the district court that lies west of Wilson Avenue shall become a part of the Chicasaw zone.

(d) The area in the Westlawn zone as described in the July 30, 1970 order of the district court that lies north of Dauphin Street shall become part of the Old Shell Road school zone.

(3) Counsel for the school board agrees with counsel for plaintiffs-appellants that they will confer and make facts available regarding desegregation of the school system staffs.

(4) Students who refuse to attend the schools to which they are assigned by the school board under the order of the district court shall not be permitted to participate in

any school activities, including the taking of examinations and shall not receive grades or credit.

(5) Henceforth, any time the school board desires to have changes in zone lines made, it shall give reasonable notice to the parties.

The order of the district court of July 30, 1970 is in all other respects AFFIRMED.

IT IS SO ORDERED.

District Court Order of September 4, 1970

On the 1st day of September 1970, the Board of School Commissioners of Mobile County, presented to the Court six (6) petitions seeking modification of the mandates of the Fifth Circuit Court of Appeals and of this Court in the following areas:

(1) Petition seeking to continue the operation of the sixth grade at the Westlawn School.

(2) Petition seeking to continue the operation of the sixth grade at the Morningside School.

(3) Petition requesting that the boundary line between the Mertz zone and the Morningside zone be redrawn.

(4) Petition seeking to assign students in grades 7-9 who live in the Mertz Elementary zone to Eanes Junior High School instead of Washington Junior High School.

(5) Petition seeking to continue the operation of the sixth grade at the Mertz School.

(6) Petition seeking re-establishment of the Arlington Elementary School and zone.

The Court studied and considered these petitions and also had them reviewed by the Bi-Racial Committee. Now therefore, after study and after having received the report of the Bi-Racial Committee, the Court is of the opinion that said petitions should be and are hereby DENIED.

DONE at Mobile, Alabama, this the 4th day of September 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of September 4, 1970

Pursuant to the Opinions of the Fifth Circuit Court of Appeals dated August 4, 1970, and August 28, 1970, the School Board is directed, commencing with the school term 1970-71, to operate the middle and high schools pursuant to the attendance zones set forth in the decree of this Court of July 13, 1970, and shall operate the elementary schools pursuant to zones established by this Court in its Order of July 30, 1970, with the following modifications:

(a) Palmer and Glendale Schools shall be paired.

(b) Council and Leinkauf Schools shall be paired.

(c) Robbins and Hamilton Schools shall be paired.

(d) The area of the Whitley zone as described in the July 30, 1970, Order of this Court, which lies West of Wilson Avenue shall become a part of the Chickasaw zone.

(e) The area in the Westlawn Zone as described in the July 30, 1970, Order of this Court that lies North of Dauphin Street shall become part of the Old Shell Road School zone.

Students who refuse to attend the schools to which they are assigned by the School Board under this order shall not be permitted to participate in any school activities, including taking of examinations and shall not receive grades or credit and shall not be enrolled in any school in the system except the one serving the zone in which the student legally resides or to which the student has been

officially transferred, and shall not be furnished textbooks or supplies by the School Board.

DONE at Mobile, Alabama, this the 4th day of September 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of September 14, 1970

This Court having, on September 4, 1970, issued an Order in this cause concerning, among other things, the responsibility of the defendant Board of School Commissioners with regard to students attending schools other than the one serving appropriate grades in the zone in which the students legally reside or to which the students have been officially transferred, and having considered the Motion of the United States for injunctive relief and clarification of this Court's September 4 Order.

Hereby orders that the defendant Board of School Commissioners, its members, successors in office, agents, officers, employees, and all persons in active concert or participation with them be, and hereby are enjoined from implementing or enforcing any policy which will frustrate the previous Orders of this Court, and are enjoined from failing to delete from their policies such language as tends to frustrate the previous Orders of this Court.

It Is Further Ordered, as a clarification of the previous Order of this Court on September 4, 1970, that the defendant Board of School Commissioners, its members, successors in office, agents, officers, employees, and all persons in active concert or participation with them be, and hereby are enjoined from offering or affording any privileges to students attending any public school in Mobile County other than the one serving the appropriate grades in the zone in which the student legally resides or to which the student has been officially transferred, which may cause these students to remain away from their appropriate

school or which would encourage them to attend any other public school in Mobile County other than the school serving the appropriate grades in the zone in which the student legally resides or to which the student has been officially transferred; and further are specifically enjoined from providing or allowing to be provided space, facilities or equipment in the Mobile County public schools for the instruction of students at any school other than the school serving the appropriate grades in the zone in which the student legally resides or to which the student has been officially transferred.

IT IS FURTHER ORDERED that the defendant Board of School Commissioners shall immediately instruct all of its agents, officers, and employees of the contents of this Order and shall immediately deliver copies of this Order to the principal at each school in the Mobile County public school system, at the same time notifying the principals of the fact that as agents and employees of the defendant Board of School Commissioners they are bound by the terms of this Order.

IT IS FURTHER ORDERED that the defendant Board of School Commissioners report to this Court by 4:00 P.M. on Thursday, September 17, 1970, that the terms of this Order have been complied with.

DONE at Mobile, Alabama, this the 14th day of September, 1970.

DANIEL H. THOMAS
United States District Judge

District Court Decree of May 13, 1968

Pursuant to the opinion and mandate entered by the Fifth Circuit Court of Appeals on March 12, 1968, reversing this court's previous order and remanding the same to this court, the Court enters the following decree and judgment:

It is ORDERED, ADJUDGED and DECREED that the appellees, their agents, officers, employees and successors and all those in active concert and participation with them be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the Mobile school system. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system. As stated in the opinion of the Court of Appeals, the primary concern is that attendance-zone lines be drawn on a nonracial basis. To this end the board will conduct a survey as more specifically described in Section IV herein.

I.

STUDENT ASSIGNMENT

A. The appellees shall, to the extent feasible, make assignments of students and draw attendance area lines in such a way as to eliminate the effects of past racial decisions in assigning students, drawing attendance lines, and constructing school buildings.

B. Appellees shall arrange for the conspicuous publication of an announcement, giving detailed information as

to the name and location of schools to which students have been assigned for the coming school year pursuant to the desegregation plan, in the newspapers most generally circulated in the community between March 1 and March 31 of each year. Publication as a legal notice is not sufficient. Whenever any revision of attendance zones is proposed, appellees shall similarly arrange for the conspicuous publication of an announcement at least 30 days before any change is to become effective, naming each to be affected and describing the proposed new zones. Copies of all material published hereunder must also be given at that time to all television and radio stations serving the community. Copies of this notice and decree shall be posted in each school in the school system and at the office of the Superintendent of Education.

C. A street or road map showing the boundaries of, and the school serving, each attendance zone and a chart showing feeder patterns must be freely available for public inspection at the office of the Superintendent. Each school in the system must have freely available for public inspection a map showing the boundaries of its attendance area, and a chart showing its feeder pattern. A copy of this map and chart shall be given to the Parent Teachers Association at each school.

D. After the attendance areas are redrawn to achieve the desegregation of the system as provided in section IV of this decree, all students will be required to attend the school serving their zone, absent some compelling nonracial reason.

District Court Decree of May 13, 1968

II.

Construction

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not fail to consolidate schools because desegregation would result.

Until such time as the Court approves a plan based on the survey conducted pursuant to section IV herein, construction shall be suspended for all planned building projects at which actual construction has not been commenced.

Leave to proceed with particular construction projects may be obtained prior to the completion of the survey upon a showing by the appellees to the Court, that particular building projects will not have the effect of perpetuating racial segregation.

III.

Faculty and Staff Assignments

A. *Faculty Employment.* Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the dual system. Teach-

ers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty. The Board will continue positive and affirmative steps to accomplish the desegregation of its school faculties and to achieve substantial desegregation of faculties in its schools for the 1968-69 school year notwithstanding teacher contracts for 1968-69 may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The appellees shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school.

B. *Dismissals.* Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any

such proposed dismissals, and the reasons therefor, shall be filed with the clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

C. *Past Assignments.* The appellees shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual school system.

IV.

Survey

The appellees shall conduct a survey of their school system and report to the Court, by June 1, 1968, unless otherwise specified hereinbelow, the results of such survey, and shall specifically report as follows:

A. The appellees shall prepare a map for each school showing the location, by race and grade, of each student in the school system during the 1967-68 school year. Appellees will be permitted to consolidate the survey information on two maps—one to cover the urban area and the other the rural area—so long as the information is reported on the consolidated maps in a clear and comprehensible manner. However, the survey must designate students by grade.

B. Recommendations for redrawing attendance zone lines to achieve desegregation of the schools.

C. Recommendations for the reorganization of the "feeder" system consistent with the objective of achieving desegregation, to be submitted by August 1, 1968.

District Court Decree of May 13, 1968

D. A description of each school in the school system to include:

1. The size of each site and whether it is suitable for permanent use, suitable for temporary use, or should be abandoned;

2. The number of buildings on each site and as to each, whether it is suitable for permanent use, suitable for temporary use or should be abandoned;

3. The standards and criteria used to determine whether buildings and sites are suitable for permanent use, suitable for temporary use, or should be abandoned;

4. The number of regular, special and portable classrooms at each school building and the number of square feet in each such classroom;

5. Recommendations for the future use (including grades to be accommodated) of each school building and site for the next ten years, including the need for additional classrooms and the information upon which such recommendations are based, to be submitted by August 1, 1968.

E. A property inventory to include:

1. A list of all sites currently owned;

2. A list of all sites which the appellees have present plans to acquire and the size and intended use of such sites;

3. The basis for selection of all sites listed under numbers 1 and 2.

F. The status of construction of each school building currently under construction and the status of planning for the use of sites currently owned.

G. A forecast of enrollment at each school for the next ten years and the information upon which such forecast shall be based, to be submitted by December 1, 1968.

V.

Services, Facilities, Activities and Programs

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, nonracially based rules of city, county or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational

programs conducted by the appellees shall be conducted without regard to race or color. Athletic meets and competitions and other activities in which several schools participate shall be arranged so that formerly white and formerly Negro schools participate together.

VI.

Reports

A. On June 10, of each year beginning in 1968, appellees will submit a report to the Court, and serve copies on opposing counsel, showing the number of persons, by school, grade (where appropriate), and race they anticipate will be employed for the fall semester. Within one week after the day classes begin for the fall semester in 1968 and each succeeding year appellees will submit a report to the Court, and serve a copy on opposing counsel, showing the number of teachers actually working at each school by grade (where appropriate) and race. In 1968, a date later than June 10 may be appropriate because of the survey.

B. On the same dates set forth in VI (A) above, reports will be submitted to the Court, and a copy served on opposing counsel, showing the number of students by school, grade, and race, expected and actually enrolled at the schools in Mobile County.

C. Within one week after the opening of each school year, appellees shall submit a report to the Court and serve copies on opposing counsel, showing the number of faculty vacancies, by school, that have occurred or been

filled by the appellees since the order of this Court or the latest report submitted pursuant to this sub-paragraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

Done at Mobile, Alabama this 13th day of May, 1968.

(Signed) DANIEL H. THOMAS
Chief Judge.

School Board's Response to HEW's July 1969 Plan, Filed July 21, 1969

Comes now the Board of School Commissioners of Mobile County, et al., and, in accordance with the provisions of the decree and mandate of the Fifth Circuit Court of Appeals filed in this cause on June 3, 1969, files objections and suggested amendments to the proposed plan of desegregation heretofore filed in this cause by the Office of Education of the Department of Health, Education and Welfare.

Suggested Amendments

The defendants, after careful study, find that the proposed plan submitted to the Court by H.E.W. is, in its entirety, and when broken down into segments, in each major segment thereof, educationally unsound, administratively impractical and unfeasible and carries within its provisions and potential effect the basis for incalculable harm and probable destruction of the Mobile County Public School System. As suggested amendments to this plan, therefore, the defendants can only recommend that this plan be deleted and disregarded entirely and that in its place the District Court consider as a plan for the operation, and desegregation, of the Mobile County Public School System commencing with the school year 1969-70, either one of the two alternative methods of student assignment set out hereafter:

(1) As a first alternative it is recommended that the District Court enter an order requiring the operation of the school system for the 1969-70 school year on the same basis as the 1968-69 school year;

School Board's Response to HEW's July 1969 Plan, Filed July 21, 1969

(2) As a second alternative, the defendants recommend that the District Court enter an order requiring the operation of the school system for the 1969-70 school year on the basis of a system of complete free choice of schools by all students, consistent with the basic principles of freedom of choice as previously set out by the Fifth Circuit Court of Appeals in *United States* v. *Jefferson County Board of Education*, and any later refinements of the freedom of choice method of student assignment which the Court may wish to apply.

With reference to the matter of the employment and assignment of faculty, staff, and other personnel, it is the position of the defendants that these matters were not at issue in the most recent previous hearing in the District Court, and were therefore not before the Court of Appeals in the appeal out of which the June 3, 1969 mandate and judgment of the Court of Appeals arose, and therefore did not require nor permit of consideration and recommendation by H.E.W. It is the defendants' recommendation, therefore, that this portion of the H.E.W. report submitted to the District Court be deleted and disregarded entirely.

OBJECTIONS

The plan submitted to the District Court by H.E.W. is defective in that:

(1) It is incapable of effective and proper administration;

(2) It is educationally unsound;

(3) It is not in the best interest of the school system;

(4) It is not consistent with the best interest of a majority of the citizens of the county, negro or white;

(5) It is not consistent with the best interest of a majority of the students in the system, negro or white;

(6) If implemented, it will do substantial harm to the school system;

(7) If implemented, it will likely result in destruction, in whole or in part, of public education in the county;

(8) To comply fully with provisions of the plan would require an initial increased expenditure of capital outlay funds in an amount of approximately $13,000,000.00; and this money is not available;

(9) It requires, further, an increased expenditure of approximately $600,000.00 in operating expenses for the 1969-70 school year; and this money also is not available.

(10) It recommends the closing and abandonment of a number of schools in the metropolitan portion of the system; this is undesirable because it results in:

(a) The loss of use of adequate school facilities

(b) Cross-town bussing of large groups of students

(c) overcrowding of other school facilities

(d) destruction of neighborhood schools

School Board's Response to HEW's July 1969 Plan, Filed July 21, 1969

(e) forcing young children to attend schools far removed from their own neighborhoods

(11) It recommends the crosstown busing of large groups of students; this is undesirable because it results in:

(a) drastically increased expense

(b) overcrowding of some school facilities

(c) destructions of neighborhood schools

(d) forcing young children to attend schools far removed from their own neighborhoods

(e) destruction of the ability and desire of students and parents to develop needed support for neighborhood schools

(12) Destroys articulation;

(13) Requires the closing of permanent facilities in favor of the housing of students in temporary portable facilities;

(14) Departs from any concept of organized grade structure resulting in haphazard grade structures and in some instances ONE GRADE schools;

(15) Creates so-called school complexes, which are in fact not complexes and therefore impose insurmountable administrative problems;

(16) Results in a total breakdown of the neighborhood school concept in disregard of natural barriers and

School Board's Response to HEW's July 1969 Plan, Filed July 21, 1969

hazards, safety factors, convenience and other traditional educational concepts;

(17) Requires the use of various school plants in a manner for which they were not planned nor constructed;

(18) Creates completely absurd and gerrymandered school districts with reference to size, safety factors, accessibility, etc.;

(19) Requires a total and complete reorganization of the school system immediately in advance of the beginning of the school year;

(20) Destroys the possibility of conducting many extracurricular activities;

(21) Fails to make any provision for the needs of special education students;

(22) Makes the implementation of an adequate curriculum impossible in many schools;

(23) Results in attendance area lines drawn on a racial basis rather than a non-racial basis;

(24) With reference to student assignment the proposed plan is based entirely on statistics which have been found to be inaccurate in many instances;

(25) The plan includes recommendations with reference to faculty, and this was not a proper function of H.E.W.

(26) Includes no provision for transfer for good cause.

School Board's Response to HEW's July 1969 Plan, Filed July 21, 1969

(27) Recommends procedures and actions in direct contravention of the expressed will of the Congress of the United States.

The plan submitted by H.E.W. is defective in a number of other particulars which, for lack of time to prepare appropriate objections, are not stated here, but will be submitted to the Court in due course.

School Board Affidavit, Filed July 29, 1969

FOR THE ASSISTANCE AND INFORMATION OF THE COURT

To the Honorable Daniel H. Thomas, Chief Judge of Said Court:

Comes now the Defendant, The Board of School Commissioners, et al., and for the information and assistance of the Court, files the affidavit of James A. McPherson attached hereto, which contains information relevant to the matters now under consideration by the Court in connection with this cause.

AFFIDAVIT

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me the undersigned authority, in and for said county, in said state, JAMES A. MCPHERSON, who being by me first duly sworn, did depose and say:

My name is James A. McPherson. My address is 103 Baratara Drive, Chickasaw, Alabama. I am 43 years old. I am Associate Superintendent of the Mobile County Alabama Public School System. As such I am the number two man in line of authority among the professional administrative personnel of the system, ranking behind only the Superintendent. I am thoroughly and intimately familiar with the school system and its administration and operation, including the desegregation process and court

litigation in connection therewith. I make this affidavit in connection with this litigation, and for the purpose of submission to the United States District Court, Southern District of Alabama. I have testified in that Court on a number of occasions in the past in connection with this litigation. My personal history, educational background, experience, and professional background are before the Court as testimony in the record in previous hearings in this case, consequently I will not recount them here.

Following a mandate and order of the United States Fifth Circuit Court of Appeals entered in the pending Mobile County School litigation on June 3, 1969, I was assigned by the Superintendent the primary responsibility of working with officials of the Office of Education of the United States Department of Health, Education and Welfare (which I will hereinafter refer to as H.E.W.) in the efforts of the Board of School Commissioners of Mobile County and the Mobile County Public School System to comply fully with this mandate and order. We were told by the School Board's Attorney that the District Court on June 4, 1969 contacted H.E.W., and that we should expect to hear from them at any time. In conference with the School Board and the Superintendent, and various other members of the staff, I was instructed to receive the agents or employees of H.E.W. courteously, to cooperate with them fully, to make available to them any information they should request, and to make every effort to arrive at some mutually satisfactory agreement with them with reference to a plan of desegregation to be recommended to the District Court, in compliance with the provisions of

the Court Order. At this point I wish to say that I conscientiously endeavored to comply with these instructions to the fullest extent.

Our first contact from H.E.W., notwithstanding the fact that they had been contacted by the District Court on June 4, was June 11, 1969 when I received a telephone call from Dr. Joe Hall who advised me that he was Director of the U.S. Office of Education, Mobile County Desegregation Study, and that he had been assigned to develop a new desegregation plan for the Mobile School System.

Following initial telephone contact from Dr. Hall, he came to my office on the afternoon of June 11, and we conferred at some length. We discussed the most recent Court Order and I spent considerable time explaining the details to him since he indicated that he had not had an opportunity to study it carefully. I then gave him an historical background report on the course of litigation up through the most recent order. I reviewed the elementary and junior high attendance area maps which were in use last year (the 1968-69 school year) with him, and he stated that they looked pretty good to him as presently drawn.

We then reviewed an outline of a report that he was expected to develop and submit to Mr. J. J. Jordan of the Atlanta Office of H.E.W. He discussed with me the types of information he would request and we agreed that he would provide me, by memo, all requests for information. I noted immediately that this outline called for a report on staff and faculty desegregation and I informed Dr. Hall that the Court Order and the litigation out of which it arose did not concern itself with staff and faculty desegregation in any manner. He expressed surprise to find

that an item had been included in the outline which was not included in the Court Order.

During the course of the conference, Dr. Hall indicated that he would be agreeable to include in the plan a transfer policy providing for transfers for any good cause, non-racial in character. He also stated that he believed it impossible in a large metropolitan area such as Mobile County to develop geographic attendance zones without operating some all black and some all white schools. He stated that he was opposed to the busing of students for the purpose of achieving desegregation, and that he believed the best solution or best method of achieving desegregation was to arrange schools where there would be virtually all predominantly white schools with negro students in the minority.

During the course of the conference, Dr. Hall stated to me that it would be impossible for H.E.W. to come in and do a proper job of evaluating the school system and developing a desegregation plan within the time allowed by the Court Decree. He also expressed to me his further opinion that not only did the judgment of the Court not allow sufficient time for them to properly develop a new plan, but that it provided insufficient time for the staff of the school system to prepare for implementation and administration of any new plan that might be approved, and that the Court should not have entered an Order requiring such broad and sweeping changes in the school system's desegregation plan so near the commencement of a new school year.

Following the June 11 conference there was no further direct contact with H.E.W. until June 20; however, by

correspondence with Dr. Hall, a working relationship was finally established by approximately June 16.

On June 20, 1969, there was a further conference with Dr. Hall attended by myself and several members of our staff. The purpose of the meeting was to present to Dr. Hall information that had been developed by the staff concerning desegregation of the rural portion of the system. I advised Dr. Hall that it was still the firm opinion of the staff and the school board that some sort of freedom of choice plan or option plan would be by far the best method under which schools in the rural portion of the system could be operated successfully and at the same time, desegregated. At the same time however, I went further and discussed with Dr. Hall details of the work that had been done by the staff towards developing a plan based upon geographic attendance areas. This plan indicated extensive integration and would have resulted in every school in the rural portion of the system being a bi-racial school, except one. During the presentation Dr. Hall raised pertinent questions and responses were made by various members of the staff. Upon conclusion of the presentation Dr. Hall seemed generally to be in agreement with what had been presented. Ultimately Dr. Hall stated that he would assume responsibility to speak for the Office of Education and the Department of H.E.W. in accepting all of the plan except one small portion dealing with the one non bi-racial school, and that he would have to check with his bosses on that question.

Dr. Hall then brought up the problem of including in his report a section regarding the terrific imposition placed

upon school systems which are asked to administer new organizational plans approved by the Court only a short time before the opening of a given school term. I encouraged this idea and pointed out, among other things, that members of the staff and/or the school board would ordinarily meet with members of the local school communities before making any drastic changes which would affect that community, but that the position imposed upon the board and staff by the current Court Order precludes such action.

At the end of the conference a further conference was scheduled for June 25.

On June 25, the further conference was held at the School Board Offices, attended by Dr. Hall, Mr. J. J. Jordan of the Atlanta Office of the Office of Education, H.E.W., and several members of the staff. The discussion began with consideration of the problem involving the one school in the rural portion of the system that had presented a problem in the previous discussion, and Dr. Hall indicated that he could not accept any recommendation which included this school as an all negro school. He went further to say he did not feel that it was absolutely necessary to eliminate every all negro school, but that in this particular case since he felt it could be done easily, then it would have to be done.

At this point I think it pertinent to note some observations of Dr. Hall's behavior. During the times when we were dealing together without the presence of Mr. Jordan, Dr. Hall was quite agreeable, cooperative, and seemed disposed towards seeking to reach some compromise agreement on most of the points in contention. In the presence of Mr. Jordan however, he presented an entirely different

countenance, was stern, disagreeable, and showed no inclination to try to compromise at all.

Continuing the conference, further discussion was held and it became apparent that the H.E.W. people themselves had done nothing towards the actual development of a desegregation plan, but had been almost entirely engaged in the development of information which was later put forth in the first four chapters of their Report to the Court. I reminded Dr. Hall and Mr. Jordan of the necessity of submitting any agreed plan to the Court, by July 3, and again called to Dr. Hall's attention, as I had done before, that I had plans which would take me out of the city beginning June 28 (Saturday), and strongly urged them to make every effort to have their work completed in time for review at a further conference on Friday, June 27.

At this point I brought up the subject of money which would be needed to pay administrators and other staff personnel to come back to work before their contracts commenced in mid August, in order to prepare for implementation of the new plan. Because of budget limitations the board is not in position to supply money for this purpose. I advised them that I had written to the Office of Education in Atlanta concerning the possibility of funds to fill this gap and had been informed that no funds were available. Mr. Jordan stated that possibly some money for this purpose may be available, but he could give no assurance of this. As of this date we have not been able to arrange for any such funds. Dr. Hall raised the question of whether or not money would be available to purchase buses if the plan which will eventually be ordered implied the necessity for

a substantial increase in the amount of busing in the system. I advised Dr. Hall that we had no money available for such purpose and Mr. Jordan advised that no money would be available from the Office of Education.

We then turned to a consideration of steps to be taken in the metropolitan or city portion of the system. I advised Mr. Jordan and Dr. Hall of the following things.

I advised them that the board and staff are not opposed to integration of the school system, but that we want to operate the system in a way that is educationally sound, administratively practical, and is fair to all of the students; that we do not want to return to the point to where we will be operating the system on a racial basis. Dr. Hall seemed to concur in this idea generally.

I advised them that in our opinion, generally, school children, and particularly elementary children, should be left in a school which is geographically near their home and to which they have access with the least amount of danger from traffic and other hazards. I then pointed out that there will inevitably be many school districts which when serving the children of the area or community, will be almost entirely white or entirely negro; and that no amount of gerrymandering of lines would produce a higher degree of integration without resorting to a massive transportation program, to which we are basically opposed. I then pointed out that zones have to be drawn in such a way that school population would relate to facilities which are available and that all zones are interrelated both horizontally and vertically. Reference was had further to the need of relating attendance areas to traffic patterns and existing

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city bus transportation routes and numerous other factors affecting the arrangement of attendance areas. I also presented strongly the need to take into account the needs of special education students, and some reasonable transfer provision non-racial in character.

The conference concluded with arrangements to meet in conference again on Friday, June 27. Dr. Hall mentioned that two additional people, whom he referred to as experts in drawing attendance lines, would attend the Friday conference with them. With this the conference was concluded.

The following day, June 26, I was advised by Dr. Hall that he and the H.E.W. people would have to cancel the conference scheduled for Friday, June 27. He gave no explanation. At a later time, when I had occasion to attend the taking of the sworn deposition of Dr. Hall in the office of the School Board Attorney on July 15, 1969, I found the reason why it was necessary for Dr. Hall to cancel the conference. Dr. Hall stated in response to questions by the School Board Attorney that the decision with reference to the details of the desegregation plan, and the arrangement of attendance areas contained in the H.E.W. recommendations was a cooperative undertaking among Dr. Hall, Mr. J. J. Jordan, and the two so called experts, a Dr. Weincoff and a Dr. Stolee; that Dr. Weincoff did not arrive in Mobile until Thursday afternoon (June 26) and Dr. Stolee did not arrive until Thursday night (June 26); and that all of this work was done by the four of them Thursday night, Friday and Friday night (June 27).

During the course of his deposition testimony Dr. Hall also revealed that after this work was done on Thursday

and Friday he went to New Orleans to meet with Dr. Gregory Anrig, who was Mr. Jordan's superior in Washington, and who had to review the work, and that this was done in New Orleans on June 29.

A further conference was arranged in the School Board Offices for Tuesday, July 1. The conference was attended by Dr. Hall, Mr. Jordan, myself, Dr. Cranford Burns and other members of the staff. The purpose of the conference was to give the H.E.W. people an opportunity to present their plans for the school system. This was done by Mr. Jordan and he pointed out that two consultants were used in the drawing of the district lines, but he refused to identify them. Later during the course of the deposition previously referred to I found out that it was Dr. Stolee and Dr. Weincoff.

Upon viewing the plan I immediately raised questions concerning the number of schools being closed, the apparent mass transportation being required, the use of facilities for purposes for which they were not designed, and the creation of so called complexes which immediately appeared to me to be unworkable. Mr. Jordan responded by saying that their plan would call for a rather extensive program of renovation and substantial busing. He also indicated that he did not know if the busing would be legal, and that if not the plan would have to be reworked.

Mr. Jordan then stated that he felt sure the professional staff of the Mobile School System could devise a better plan than the one that he had proposed, but that what he had seen so far was not satisfactory and he felt it the responsibility of H.E.W. to make some kind of proposal at least as a point of departure. I pointed out to Dr. Hall and Mr.

Jordan that the H.E.W. plan as presented was totally and completely unacceptable in whole and in part to the professional staff and no doubt the school board would feel the same. Mr. Jordan responded by saying that the board had nothing to gain by accepting this plan because the Court will order a plan anyway. Dr. Hall commented that at first glance, the overall plan may not be very appealing but that with study and reflection the plan "grows on you".

In concluding the conference I asked for copies of the maps and other material prepared by H.E.W. and they declined to give me copies of the same. Copies were obtained later on when the H.E.W. report and recommendations were filed with the Court.

Ultimately no overall agreement was reached between H.E.W. and the School Board on a desegregation plan to be filed with the Court. Thereafter, H.E.W. filed its recommended plan in the Court, and a copy has been delivered to me. I have reviewed the same and find that it is essentially the same plan they had presented to me in conference as a suggested compromise. It appears from this that what they presented to us as a proposed compromise was not really an effort to compromise but a presentation of their recommendations which they sought to have the School Board agree upon, lacking in which they intended to file the same with the Court as their recommendations all along.

I have now carefully and thoroughly reviewed the proposed desegregation plan and other materials submitted to the Court by H.E.W. I have been asked by the School Board Attorney to provide an evaluation of this material, and I am setting out such an evaluation hereafter.

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My evaluation of the recommendations submitted by H.E.W. to the District Court is that as a whole they are totally and completely unsound educationally, and they are incapable of effective and proper administration. It is my opinion that the implementation of this plan of operation of the school system would not be in the best interest of the school system, would not be consistent with the best interest of a majority of the citizens of the county, negro or white, and would not be consistent with the best interest of a majority of the students in the school system, negro or white. It is my further opinion that if these recommendations should be accepted and ordered for implementation as the method of operation of the Mobile County Public School System, it would do substantial harm to the school system; and I see within these recommendations the foundation for the likely destruction, in whole or in part, of public education in the county.

By educationally unsound, I simply mean that the recommendations contain many proposals and procedures which are not based upon sound educational policy. The plan is literally filled with examples of this but one striking example will suffice at this point. Hillsdale Heights School is proposed as a one grade school, to house only eighth grade students from almost the entire western section of the city of Mobile. Such a proposal is so totally unsound from an educational standpoint that it is inconceivable anyone could recommend such a procedure, unless they were doing so under the necessity of achieving some specific result at the expense of normal sound educational practice.

By stating that the recommended plan is incapable of effective and proper administration, I simply mean that

as a professional school administrator with substantial experience in this school system, I do not feel that the plan recommended by H.E.W. could be effectively administered; because of the numerous departures from sound educational practice as well as because of the numerous departures from sound administrative procedure and because of numerous apparent inaccuracies in the statistical data that forms the basis for the recommendations.

The desegregation plan contained in the H.E.W. recommendations is obviously a hastily contrived hodgepodge prepared by someone who has no real familiarity with the subject with which he was dealing, and designed for the specific purpose of obtaining a maximum placement of negro students in schools with white students and vice versa, while totally subordinating and in many cases completely ignoring all other relevant factors except the assumption, to which I do not subscribe, that the mere physical placing of negro children and white children in school together will improve the quality of education for all, irrespective of all other factors.

This is my general criticism of the H.E.W. recommendations. I will now point out a number of specific criticisms all of which fit together, along with many others which I will not comment upon because of limitations of time and space, to form my general opinion that the plan as a whole, and in each major segment thereof, is educationally unsound and totally incapable of effective and proper administration. First, I will outline these criticisms without lengthy explanation; then I will come back and comment in more detail.

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1. The H.E.W. recommendations require financial expenditures quite in excess of the capabilities of the school system, in order to meet their requirements with reference to busing of students and other aspects of the recommendations.

2. The H.E.W. recommendations require the closing and abolishment of a number of schools in the city portion of the school system resulting in: the loss of use of adequate school facilities while at the same time overcrowding other school facilities, crosstown busing of large groups of students thereby forcing young children to attend schools far removed from their neighborhoods, the dissipation of the neighborhood school concept with reference to the schools affected.

3. With reference to the crosstown busing of large groups of students in the city portion of the system, the H.E.W. recommendations result in: drastically increased expense, the overcrowding of some school facilities, the forcing of young children to attend schools far removed from their own neighborhoods, the dissipation of the neighborhood school concept, and the lessening of the desire and ability of students and parents to develop essential support for neighborhood schools as a center of the community.

4. The H.E.W. recommendations depart from any reasonable concept of organized grade structure, resulting in haphazard grade structure and in some instances one grade schools.

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5. The H.E.W. recommendations create so called school complexes, which are in fact not complexes and impose insurmountable administrative problems.

6. The H.E.W. recommendations are based upon and require substantial gerrymandering and create completely absurd school attendance areas with apparent total disregard for safety factors, accessibility, transportation routes, manageability, and many other factors normally taken into account in the creation of school attendance areas.

7. The H.E.W. recommendations result in a total rejection of the neighborhood school concept, in disregard of all traditional educational principles which go with the neighborhood school concept.

8. The H.E.W. recommendations require the use of many school plants in a manner for which they were not planned, designed and constructed.

9. The H.E.W. recommendations make the implementation of an adequate curriculum impossible in many schools; particularly the one grade schools created thereby.

10. The H.E.W. recommendations obviously result in attendance area lines drawn on a racial basis rather than a non-racial basis.

11. Under the H.E.W. recommendations the possibility of conducting many extracurricular activities is destroyed or substantially weakened.

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12. The H.E.W. recommendations fail to make any provision whatsoever for the needs of special education students.

13. The H.E.W. recommendations make no provision for transfer for good cause, non-racial in character.

14. With reference to student assignment the H.E.W. recommendations are based entirely on statistics which we have found, upon cross checking, to be inaccurate from the standpoint of the matching of students with facilities. This presents a critical administrative impossibility.

Purely from the practical standpoint, I disagree with the recommendations because to fully implement them would require an initial increased expenditure of capital outlay funds for renovation, addition and conversion of school facilities to meet the usage proposed by the plan, in an amount approximating $12,575,200.00; realizing that this money is not available and will not be available in the foreseeable future; and the recommendations make no provision for this monetary deficiency.

Along the same line, the H.E.W. recommendations call for the closing of a number of schools in the city portion of the system and the housing of these students at schools far removed from their places of residence, and calls for the accomplishment of this by mass transportation of these students. To implement the H.E.W. recommendations would require the acquisition of an operation of eighty-four new busses in the city portion of the school system. Initial acquisition costs would be $457,672.30 and operational cost

for one year would be $131,980.80 for a total expense for the coming year of $589,653.12, and a recurring yearly expense each year thereafter of $131,980.80. In addition the H.E.W. proposal would necessitate the acquisition of an additional ten busses for use in the rural portion of the system for an additional expense the coming year of $70,196.30 and a recurring additional operating expense each year of $15,712.00. As with the expense of addition, renovation and conversion previously referred to, the H.E.W. recommendations, while necessitating such expense, make no provision for the money to cover the expense other than suggesting that which we know to be available from the State Department of Education, which would cover only a minute portion of this total cost. I specifically inquired of the H.E.W. people about Federal financial assistance in this regard and was advised that there would be none.

In a like manner, there would be a loss in money value of over $4,000,000.00 to the school system as a result of the closing of the six schools (Toulminville, Calcedeaver, Howard, Caldwell, Emerson and Calvert) as recommended by the H.E.W. proposal.

I have attached hereto, marked Attachment A, information prepared by our staff setting out these figures in somewhat more detail.

I disagree with the H.E.W. recommendations because they require the closing of neighborhood schools in favor of busing these students across town, great distances. This is particularly undesirable in this instance because a substantial number of the children affected are young elementary school children. Such an arrangement is basically

unsound. In this instance it also results in drastically increased expense to the school system as already referred to. It results in the closing of permanent facilities and the housing of these students, or others whom they displace, in temporary facilities at the schools to which they are transported. It results in the destruction of neighborhood schools. I do not think it desirable to move young children from their neighborhoods where they are familiar with the surroundings to distant neighborhoods and schools where they are unfamiliar with the surroundings and develop a feeling of insecurity. In addition to psychological problems the mere physical distance involved creates a number of problems and hardships for the students and for their parents.

I disagree with the H.E.W. recommendations because of the fact that they work in many ways, busing included, to destroy the concept of neighborhood schools. It is impossible for students to identify fully with school centers far from their familiar surroundings. It makes it impossible for parents to identify with the school center; and it leads to destruction of the school as a strong force in the development of such activities as Parent-Teacher Associations, Scouting Programs and many other extracurricular activities. Under the H.E.W. recommendations the important role that the neighborhood school plays in the life of the community is for the most part effectively destroyed.

For the same reasons, a number of recommendations in the H.E.W. proposal are at least as objectionable as the crosstown busing. The proposal recommends the formation of so called "complexes" involving a number of schools. An example is the Sidney Phillips, Booker T. Washington,

Fonvielle "complex". Under the H.E.W. proposal these three schools would be operated as one junior high school, with every student having to pass through each of the three school centers in the complex during his years of junior high school attendance. There are many problems associated with this specific proposal which make it totally unfeasible from an administrative standpoint. From the educational standpoint it presents grave difficulties in the development of an adequate curriculum, the development of student faculty relationships, the development of extra-curricular activities, the access of students, and many other problems.

A good portion of the H.E.W. proposal is based upon a series of artificial arrangements of schools and students. Several one grade schools are called for. This is so unsound from the educational and administrative standpoint as to be obvious to anyone. Latitude in the development of curriculum is completely limited. Student identification with the school and the opportunity for development of faculty student relationships is thwarted. Important extra-curricular activities and Parent related activities are destroyed.

The H.E.W. proposal is totally devoid of any concept of organized grade structure, resulting in haphazard grade structure arrangements and in some instances, as previously referred to, one grade schools, and other equally impractical defects.

As a result of this sort of situation, under the H.E.W. proposal many students would attend as many as six different schools by the time they reach the 10th grade.

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The H.E.W. proposal contains arrangements of attendance areas prepared by someone who obviously had no knowledge of or concept of the significance of natural barriers such as railroads, major thoroughfares, transportation routes, creeks and streams, bridges, or the lack thereof, commercial and industrial centers and other factors. A close examination of the H.E.W. proposal and the maps included therewith indicates that in many, many instances the attendance area boundary lines are poorly placed and do not take these necessary factors into account.

In numerous instances the H.E.W. proposal calls for the use of various school plants in a manner for which they were not planned nor constructed, and therefore do not contain the necessary or proper facilities. I have previously referred to the expense that would be involved in converting these facilities to the use proposed by the H.E.W. recommendations. If they are not converted it would result in thousands of students attending schools where the facilities are totally and completely inadequate, for example; high school students attending school in elementary school facilities where there are no gymnasiums, laboratory facilities, etc.

As near as I have been able to determine from my review of the H.E.W. proposal it makes no provision whatsoever for the needs of special education students (students requiring special facilities, special classes and special instruction, due to mental deficiency or other circumstance).

The H.E.W. proposal does not contain a provision for transfer for good cause, without regard to race. Such a provision is necessary for the effective operation of any

school system and a failure to include the same in the proposal for the operation of the school system indicates either total ineptness from an educational standpoint or amazingly callous disregard for the students of the school system.

After a thorough review by our staff it appears that the H.E.W. recommendations are incapable of administration as a whole, if for no other reason, because they simply are statistically inaccurate. We have found in a number of instances that the tables and statistics shown in the proposal are inaccurate, and that a number of schools, if operated upon the basis recommended by H.E.W. would be overcrowded by hundreds of students; in one instance (Eanes-Woodcock Complex) by as many as 900 students. At the same time, many other schools would be underpopulated; in one instance (Mobile County Training School) by as many as 930 students. In other words, the H.E.W. proposal results in a mismatch or unbalance of students with relation to facilities; so much so, that an attempt to operate the schools on the basis of the proposal would literally mean chaos from that standpoint alone. It is difficult to determine if these inaccuracies resulted from lack of information, lack of skill, lack of concern, neglect, or design.

In seeking to evaluate the H.E.W. proposal we found that many geographic boundaries are not clearly identifiable. In order for any plan to be workable it must be a plan that can be understood and the geographic boundaries in the plan must be clearly identifiable by the staff and by the community. In many instances the H.E.W. plan contains boundaries which simply cannot be identified or pinned down. An example of this is where boundary lines separating the Murphy and the Williamson-Craighead

areas extends haphazardly through the middle of two subdivisions, Rosswood and Brookwood. Another example of this same kind of a problem appears in the rural area. The H.E.W. plan calls for the dispersal of sixth grade students in the Davis area to Griggs and Burroughs and Hollingers Island, but *no* boundaries are given to indicate, either to professional staff or to the community, which sixth graders in the area would go to which school. This compounds confusion and frustration for both the community and the staff.

The H.E.W. proposal in the metropolitan area calls for a two phased implementation. The difficulty here is that it is not clear which phase is which. For example: The H.E.W. plan says that recommended changes east of the Belt Line will not be effective until September of 1970, except for the transportation of part of the Toulminville students. It recommends, however, that children in the Emerson and Fonvielle areas be transported to schools which are west of the Belt Line. Clearly this is a change in school attendance which affects areas which are both east and west of the Belt Line. In this kind of situation the plan does not make clear whether this change is to be implemented in September, 1969 or September, 1970. Another example of this confusion can be found in the middle school plan where the Phillips, Fonvielle, Washington attendance area takes in portions of the city which are both east and west of the Belt Line. It is not clear how the Phillips, Washington, Fonvielle complex plan could be implemented for those students west of the Belt Line in September, 1969, while at the same time it was *not* implemented in Sep-

tember, 1969 for students in that area who are east of the Belt Line. In other words, there are instances where the H.E.W. plan affects children, some of whom live east and some of whom live west of the Belt Line, and it sets out no recommendations as to how this kind of problem can be resolved. Similar difficulties would occur in the Vigor-Blount complex, in the Hamilton-Robbins area, and in other areas.

The H.E.W. plan includes provisions for the pairing of several schools (in one case a triumvirate is set up in which three schools will somehow serve one area. The ultimate example is the Prichard quadruple complex). In any of these instances where multiple facilities are to serve one area and particularly when the schools involved are geographically widely separated, there are many administrative problems which would have to be resolved. For example, in the case of the Arlington-Council complex, children living in that area are to attend grades 1-5. The H.E.W. plan does not spell out what kind of arrangement is to be set up with respect to grade levels. It would be possible to put the first and second grade at one school and the third through the fifth grades in the other, or put the first and second grade at one school, the fourth and fifth at the other with both schools having a third grade. If it happens to be the case that the grades cannot be distributed disjointly between or among the schools involved, then the question arises as to what to do with the extra grade—that is, how it will be decided which school children will attend which school if both schools serve the grade to which they are assigned. This would lead to confusion for parents as well as for school officials. The only concrete sug-

gestion made for this kind of situation is that a child living in one of these areas should attend all the schools serving that area for at least one year each during the time which he resided in that area and is assigned to a grade served by the particular complex. This is unsound by any standard.

Another difficulty which the H.E.W. plan will cause in these paired school areas will be the actual administration of the school when the campuses are geographically separated.

Three years ago the Board of School Commissioners adopted a 5-3-4 plan of school organization. Since that time as facilities and circumstances have permitted, we have moved toward this goal in the organization of our schools. The plan, as proposed by H.E.W., particularly in the metropolitan middle school area, will have the effect of moving us away from this plan. Although since the adoption of the Board's policy we have not been able to entirely implement the 5-3-4 plan, I feel that any recommendation which moves away from this goal will be detrimental to the overall educational process, unless this move is based on other sound educational principles. What principles H.E.W. used as a basis for moving away from this organizational pattern escapes me entirely.

The H.E.W. proposal substantially lessens articulation and the opportunity to develop adequate curricula. Articulation under the H.E.W. plan will be a great deal less than is satisfactory from an educational standpoint. Development of curricula is restricted by a number of factors including insufficient articulation and numerous other factors such as the existence of one grade schools and the haphazard grade structure included in the H.E.W. plan.

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There is another most important factor which was apparently overlooked completely by those who developed the H.E.W. recommendations; the future. The H.E.W. proposal is devoid of any consideration for the future. As far as I have been able to determine from examination of the H.E.W. report, the services of the Housing Board and of the City Planning Commission were not utilized or considered in making the recommendations. In his deposition testimony, Dr. Hall admitted that they were not. Expected residential growth in the downtown area as a result of urban renewal projects apparently had no effect on the H.E.W. recommendation in this area. Specifically, a number of schools in urban areas, where population increase is expected, are closed under the H.E.W. proposal. Among these schools are: Emerson, Caldwell, Howard and Toulminville.

Again, I must reiterate that the recommendations submitted to the Court by H.E.W. are as a whole, and in each segment thereof, educationally unsound and incapable of effective administration; any attempt to implement them in the operation of the school system will do substantial and lasting harm to the school system and to all students who must utilize it, negro and white alike.

JAMES A. MCPHERSON

School Board Affidavit, Filed July 29, 1969

ATTACHMENT A

Page 1

MOBILE COUNTY PUBLIC SCHOOLS

ESTIMATED CONSTRUCTION AND RENOVATION COST AS PROPOSED BY THE HEW STUDY FOR MOBILE COUNTY

Conversion and Addition Cost:

Vigor-Blount	$ 4,600,000.00
Williamson-Craighead	1,500,000.00
Sidney Phillips-B. T. Washington	1,901,200.00
Woodcock-Mae Eanes	2,100,000.00
Burroughs	1,400,000.00
Hillsdale	680,000.00
Dunbar-Central	394,000.00
Total	$12,575,200.00

Cost of Buildings to Be Closed:

Toulminville	$ 1,428,400.00
Calcedeaver	423,200.00
*Howard	516,800.00
Caldwell	739,100.00
*Emerson	890,000.00
Calvert	123,900.00
Total	$ 4,121,400.00

* These buildings to be replaced with new buildings.

School Board Affidavit, Filed July 29, 1969

ATTACHMENT A

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY
MARYVALE SHOPS
TRANSPORTATION DEPARTMENT

July 9, 1969

ESTIMATED COST TO OPERATE AN ADDITIONAL 84 BUSES DURING THE 1969-70 SCHOOL TERM

GRADES 1 through 5

SCHOOL	NO. OF BUSES
Maryvale	2
Morningside	2
Kate Shepard	2
Herts	2
Fonde	3
Westlawn	1
Austin	1
John Will	3
Forest Hill	5
TOTAL	21

GRADES 6 through 9

SCHOOL	NO. OF PUPILS	NO. OF BUSES	GRADE
Hillsdale	914	15	8th
Scarborough	600	10	6th - 7th
E. J. Clark	240	4	8th
Prichard Jr. Hi.	65	1	6th - 7th
Mobile Co. Trng.	125	2	6th - 7th
Sidney Phillips	70	1	6th - 9th
Dunbar (Central)	600	10	6th - 9th
Woodcock	360	6	6th - 9th
TOTAL		49	

GRADES 9 through 12

SCHOOL	NO. OF PUPILS	NO. OF BUSES	
Davidson	540	9	Students from the
Shaw	305	5	Toulminville area
TOTAL		14	

The above figures are based on 60 passenger buses with 60 pupils to each bus.

Cost to operate bus without cost of driver ——— $ 396.20
This figure is based on the cost to operate the 1968 model buses during the 1968-69 school term.
Cost of Driver ——— 1,175.00
TOTAL ESTIMATED COST TO OPERATE ONE BUS $ 1,571.20 x 84 Buses = $131,980.80

PURCHASE PRICE OF ONE BUS $ 5,448.43 x 84 Buses = $457,672.32

TOTAL ESTIMATED COST = $589,653.12

ATTACHMENT A
Page 2.

School Board Report to the Court, Filed October 13, 1969

The August 1, 1969 Order of this Court requires that the School Board file with the Court, not later than December 1, 1969, a further suggested desegregation plan for all schools located east of I-65. The order also requires that a report of progress in this regard be filed on October 10, 1969. This is the October 10, 1969 progress report.

This Court's August 1, 1969 order required an almost complete reorganization of the entire rural portion of the school system and major changes in the metropolitan portion of the system; all within approximately 30 days. This made unusual and excessive demands of time and effort upon the professional staff of the school system following the August 1 order, throughout August, and continuing through the opening of school in September.

With the opening of school, demands of time and effort were increased and intensified due to extensive dissatisfaction and unrest in the community as a result of implementation of the August 1 Order. This dissatisfaction and unrest has manifested itself in numerous ways including pickets, boycotts, student sit-ins, an exceedingly large number of transfer requests, public gatherings, confusion, threats, etc. This court is already aware of many of these things.

As a result, the Board and Staff have been unable to apply more than preliminary effort towards developing a new desegregation plan for metropolitan schools east of I-65. Within recent days there have been indications of a general abatement of confusion and unrest. Unless there should be a reversal of this new trend, the staff should be able to apply more productive effort to this task within coming weeks, to the extent that the board should be in position to make a more detailed progress report on or before November 20, 1969.

School Board Report to the Court, Filed November 20, 1969

The August 1, 1969 Order of this Court requires that the School Board file with the Court, not later than December 1, 1969, a further suggested desegregation plan for all schools located east of I-65. The order also requires that reports of progress in this regard be filed on October 10, 1969, and November 20, 1969. The October 10 report was filed on that date. This is the November 20 report.

This Court's August 1, 1969 order required an almost complete reorganization of the entire rural portion of the school system and major changes in the metropolitan portion of the system; all within approximately 30 days. This made unusual and excessive demands of time and effort upon the professional staff of the school system following the August 1 order, throughout August, and continuing through the opening of school in September.

With the opening of school, demands of time and effort were increased and intensified due to extensive dissatisfaction and unrest in the community as a result of implementation of the August 1 order. This dissatisfaction and unrest manifested itself in numerous ways including pickets, boycotts, student sit-ins, an exceedingly large number of transfer requests, public gatherings, confusion, threats, etc. This court is already aware of many of these things.

As a result, the Board and Staff were for some weeks unable to apply more than preliminary effort towards developing a new desegregation plan for metropolitan schools east of I-65. Within recent weeks the professional staff have however been able to turn their attentions to the development of the new plan.

School Board Report to the Court, Filed November 20, 1969

First, there was a thorough review and restudy of the material submitted to the Court by HEW as its suggested desegregation plan prior to the Court's August 1 Order. This restudy revealed that the plan suggested by HEW was more educationally unsound, administratively unfeasible and generally objectionable overall than had been first thought when it was submitted by HEW to the Court.

Next, there was an assessment and evaluation of the impact of this Court's August 1, 1969 Order, and the implementation of that order, on the school system. It was found that implementation of the order had resulted in numerous undesirable effects, including the apparent withdrawal of several thousand students from the system.

Next there was a review of suggested desegregation plans heretofore filed in this Court by the Justice Department and by Counsel for the plaintiffs; and plans heretofore filed by the School Board.

Drawing upon information and knowledge resulting from the review procedures described above, and upon their general knowledge, the staff then set about efforts to discover and develop a comprehensive desegregation plan for the schools east of I-65. This effort is still in progress, but no comprehensive plan is yet available for recommendation to the Court.

The Court should be advised that these efforts described above have served more and more to convince the staff that the most feasible plan for the operation and desegregation of all secondary schools in the metropolitan area (both east and west of I-65) is a system of student assignment based on free choice of schools by all.

District Court Order of January 22, 1970

Application for intervention as parties defendant, filed on July 29, 1969 by the Mobile County Council of Parent-Teacher Associations and Mrs. Eugene Gibbons, Robert R. Williams, Odie Williams, Mrs. Frances D. Bridges, James T. Hammer, Jr., Mrs. J. L. Kittrell, John J. Hackmeyer, K. H. Williams, William E. Deneke, Mrs. Irvin G. Rentz, Mrs. Warren M. Banta, Jr., Ruth Merwin, Thomas L. Griffin, W. A. Kimbrough, Jr., James F. Hurd, Edwin M. Johnson, Mrs. B. L. Gilbert, Mrs. O. L. Wilson, Jr., H. B. Young, Mrs. James R. Strange, Samuel W. Jenkins, Mrs. Patsy T. Stinson, W. M. Flannagan, Sr., Marie T. Clotfelter, Mrs. Charles H. Durham, W. S. Van Langingham, Glendean R. Harrison, Charles S. Harrison, and Mrs. Jean Hooker, on behalf of themselves and all others similarly situated, being considered by the Court, is hereby GRANTED.

DONE at Mobile, Alabama this the 22nd day of January, 1970.

DANIEL H. THOMAS
Chief Judge

School Board Response to Order, Filed January 30, 1970

Comes now the Board of School Commissioners of Mobile County, and each member thereof, through their attorneys Pillans, Reams, Tappan, Wood and Roberts, and for response to this Honorable Court's Order of January 28, 1970, would respectfully say:

1. The Board, on December 1, 1969, upon the express orders and directions of this Court, filed a revised desegregation plan containing recommendations for steps to be taken toward further desegregation of the schools in the system lying east of Interstate Highway 65.

2. These recommendations were developed over a period of approximately three months. They reflect the expert thinking and best judgment of competent, trained, professional educators who are thoroughly and intimately familiar with the school system. The desegregation plan embodied in these recommendations was soundly conceived and carefully fashioned in order to comply with all legal requirements imposed by the Court; and at the same time to do so in a manner that will be educationally sound, will cause the least possible hardship to the least number of students, parents and teachers, and will present the least possible danger of destruction of or substantial harm to the school system. If there were other recommendations that would accomplish all of these things better and more fully they would have been included as a part of the December 1 recommendations to begin with; but there are none.

3. It should be pointed out that what the Court has now done is to order the Board to attempt to have its pro-

fessional staff to hastily, in a matter of several days, alter and revise the end product of this three months of extensive, careful, analytical work. Such a hasty effort cannot be expected to produce competent results. If we were merely dealing with maps and figures on a piece of paper this would present no problem; but we are not, we are dealing with human beings, children, and the very life of a public school system. The professional staff people indicate that what the Court has suggested calls upon them to violate and sacrifice professional standards and principals that they, as professional educators, hold inviolate, and this they cannot do.

4. In compliance with the order of the Court we would advise the Court that we have carefully restudied our recommendations of December 1, 1969, with a view towards revising them and find that we do not have any revisions to suggest to the Court, except these:

(a) Since the Court now contemplates implementation on February 1, in the middle of a school year, rather than at the beginning of the next school year, provision should be made to allow all senior students the option of retaining their present assignments, if they choose to do so, in order that they may graduate from the schools they have attended all these years.

(b) Some provision should be made to allow the athletic programs now in progress at the various schools to continue until the end of the basketball season.

(c) The second semester of the school year has already begun and students are already in the process of second semester work. The next natural division point in the

school year will be the beginning of the fourth quarter work on April 6, 1970. The Court's Order of February 1 should provide for the transition to be made at the end of the third quarter and before the fourth quarter begins.

(d) The best interest of the school system, and the individual welfare of all of the students in the system, black and white, would best be served by an order that will not call for the reassignment of any student during the remainder of this school year.

5. The professional staff have carefully studied the three alternate proposals filed with the Court by HEW on December 1, 1969, as well as the revised proposal submitted to the Court by the United States Department of Justice on January 27, 1970, as referred to in the Order. Based upon their study and the information furnished to the Board as a result of their study we wish to advise the Court as follows:

(a) Each of these four proposals suffers from the basic defect that it is on the whole educationally unsound and that it is made up of a variety of component parts most all of which are also educationally unsound, individually.

(b) Each of the four proposals reflects clearly the fact that it was devised by someone who has no practical working knowledge of the school system; as well as by someone who either has none of the basic professional and ethical principals of a professional educator, or having them, is prepared to sacrifice them to other considerations foreign to and inconsistent with sound professional ethics and practice.

School Board Response to Order, Filed January 30, 1970

(c) Each of the four proposals is educationally unsound and administratively infeasible to the extent that it could not, either in its present form or with modification, be implemented in the middle of a school year without total disruption of a large part of the school system for a period of several months; and there is considerable doubt if either of these four proposals, could ever be placed into full implementation successfully.

(d) We have pointed out these defects to the Court in detail verbally during the course of the several conferences and we will reiterate this to the Court by written affidavit testimony if the court should so desire.

District Court Order of January 31, 1970

In the Court's order entered in this cause on August 1, 1969, the elementary school of Dauphin Island was closed and the children who would normally have attended that school prior to its closing were transferred to Alba.

After a careful study, the Court is of the opinion that an elementary school should be located on Dauphin Island for children living on the Island at the elementary grade level.

Therefore, it is ORDERED, ADJUDGED and DECREED that such school be immediately established on Dauphin Island and that this Order be implemented forthwith.

DONE at Mobile, Alabama, this the 31st day of January 1970.

DANIEL H. THOMAS
United States District Judge

School Board Report to the Court, Filed February 23, 1970

Comes now the Defendant and makes this report to the Court for the purpose of advising the Court of steps taken towards implementation of its Order of January 31, 1970.

A copy of the Order was served upon the Board's attorney on Saturday, January 31, 1970. The Board's attorney immediately conferred with the Superintendent and delivered the Order to him that same day.

A conference was held, attended by the Board, Superintendent and Staff, on Monday, February 2, 1970 at 9:00 A.M. where the Board's attorney presented his interpretation of the decree and steps toward and problems associated with implementation were discussed.

Following this Board-Staff conference the Staff entered into a conference in depth which consumed the remaining part of the morning, the purpose being to examine the problems associated with the Court Order in greater detail and in greater depth; to begin the assessment of jobs which have to be done, department by department and division by division, and to structure these jobs in proper sequence, trying to see how local school activities and systemwide activities could be properly related to each other in such a way as to minimize confusion, conflict and disruptive influences in the total school program. In the meantime steps were taken to get maps produced in sufficient quantity to meet the needs of the school system.

A conference of principals directly affected by the Court Decree was held on Monday, February 2 at 2:30 P.M. The purpose of this meeting was to familiarize principals with the breadth, scope and nature of the decree and with the

several jobs to be accomplished in implementing the decree, particularly jobs which have to be performed at the local school level and to invite questions and suggestions concerning ways and means of carrying out decree with a minimum of disruption in the school system.

On Wednesday, February 4, a second Board-Staff conference was held for the purpose of making a progress report to the Board on investigations made by the administrative staff and to discuss recommendations made by the staff concerning ways and means of reorganizing the schools in conformity with the decree. At this conference a decision was made to call a special Board meeting for Thursday, February 5 in order to consider further the Superintendent's report, and to take formal action with regard to the Court Order.

On Thursday, February 5, the Board meeting was held, at which time the Board passed a resolution authorizing the Superintendent and Staff to fully comply with and implement the Order of January 31, 1970, in accordance with a procedure outlined and recommended by the Associate Superintendent, which recommendation was approved by the Superintendent.

School Board Report to the Court, Filed February 24, 1970

Comes now the Defendant and for the information and assistance of the court, files this Report to the Court.

Statement of SAM H. SHOUT, Assistant Superintendent in Charge of the Division of Administration, Mobile County Public School System:

Concerning the nature and extent of integration in the Mobile County Public School System from the standpoint of factors other than the mere assignment of faculty, staff and students on an integrated basis, I make the following statement, with the understanding that it will be filed with the United States District Court as a Report To The Court.

All services, facilities, activities and programs of the school system are offered and conducted on a fully integrated basis. All services, facilities, activities and programs with regard to each particular school in the system are available to every student of the school without reference to race; and all services, facilities, activities and programs are available as between various schools without reference to the race of the pupils attending the schools. All activities of all schools, such as athletic teams, bands, orchestras, choral programs, clubs and social activities; and all services and programs such as counseling, student governments, honor societies, and other student groups are offered and conducted on a non-racial basis.

No services, facilities, activities or programs have been changed, curtailed or limited due to the races of students. No special waiting periods or other qualifying factors or circumstances have been attached as a qualification to participate in any program or activity due to the race of any

student. All student extracurricular activities, over which the defendant board has control, are conducted on an integrated basis, as are all parent related activities. The P.T.A. (Parent, Teacher Association) organizations of the various individual schools are conducted on an integrated basis; there has been a merger of the previously separate (one formerly negro and one formerly white) P.T.A. councils into one council, and the first president was a negro high school principal.

All schools are treated equally, without regard to the race of the students attending the school or the previous racial background of the school, with regard to the allocation of instructional materials, athletic equipment, facilities, equipment, furnishing, supplies, textbooks, and allocated funds; and courses of instruction are offered on the same basis.

The statements made above have been accurately reflective of the situation since at least 1967. From the standpoint of actual participation in integrated activities tremendous progress has taken place in the desegregation of extra-curricular activities conducted under the direction of the local schools, particularly in the secondary schools. This progress is a compliment to both the white and negro students who engage in the various activities included in the extra-curricular programs and to the teachers and administrators responsible for the organization and supervision of these activities. The progress has been so great that there is now no apparent evidence that any negro student who is now attending what has been a traditionally white school is excluded from any extra-curricular activity, except on

the basis of his ability to meet the normal criteria established for participation by anyone in a particular activity.

It is not only the increase in the number of negro students now participating in extra-curricular activities conducted in traditionally white schools that is significant, but the degree to which the white students have accepted the negro students into such activities. The casual observer could not be unaware of the increasing number of negro students now participating in the bands, chorus groups, school publication staffs and athletic teams and other similar activities in formerly traditionally white schools. It is significant to note the number of negro students participating in the Junior ROTC Programs who have been placed in leadership positions as junior non-commissioned or commissioned officers in these units. These negro students are serving in these leadership positions with dignity and with the respect of the white students who are members of these units in the traditionally white secondary schools.

Less obvious but just as significant in the progress being made in the desegregation of extra-curricular activities are the increasing number of negro students who have been accepted into various honor societies such as the Beta Club and the National Honor Society in the formerly traditionally white schools. All reports indicate that there is an ever increasing number of negro students participating in student council activities and other school sponsored club activities.

This report would be less than complete if it did not point out the influence of the administrative and teaching personnel in the development of a colorless athletic program being conducted in the Mobile County Public School System. It is particularly significant that the composition of

many of the athletic teams in the formerly traditionally white schools has changed to the point that, in some cases, such schools now have predominantly negro teams representing their school in athletic contests. It is noteworthy that all of the formerly traditionally white secondary schools have outstanding negro athletes participating on their athletic teams. There has also been an increase in the scheduling of athletic contests between traditionally white and traditionally negro schools. This occurs both in regular season competition and in tournament competition.

It is the purpose and intent of the Superintendent and staff to continue to insure that all services, facilities, activities and programs of every school are available to every student without regard to race, and to encourage the active participation of all students, without regard to race.

SAM H. SHOUT

School Board Affidavit, Filed January 30, 1970

Comes now the Defendant and files the attached affidavit testimony of James A. McPherson in support of its Response To Order heretofore filed in this court on January 30, 1970.

AFFIDAVIT

STATE OF ALABAMA
COUNTY OF MOBILE

Personally appeared before me the undersigned authority in and for said county and said state, JAMES A. MCPHERSON, who being by me first duly sworn, did make affidavit and say:

My name is JAMES A. MCPHERSON. My address is 103 Baratara Drive, Chickasaw, Alabama. I am 43 years old. I am Associate Superintendent of the Mobile County Alabama Public School System. As such I hold the number two administrative position in the school system, ranking immediately below the Superintendent. Prior to assuming this position I was an Assistant Superintendent, in charge of the Division of Pupil Personnel. I have also had a number of years experience in the system in other capacities, such as teacher and principal. As Associate Superintendent I have had the primary administrative responsibility of working with the desegregation process that has been in progress in the school system since 1964. I have testified in the United States District Court, Southern District of Alabama, on a number of occasions in connection with the continuing litigation there concerning this desegregation process. I have been called to testify at various times

by both the plaintiffs and the defendant School Board. My personal and professional qualifications appear fully in the record from these past occasions, consequently, I will not set them out again here.

This affidavit is made specifically for the purpose of submission to the United States District Court as my testimony in connection with the Response To Order filed in that Court by the Defendant on January 30, 1970, and particularly that part of the Response To Order which points out defects in the proposed desegregation plan for the Mobile County School System filed in the District Court by the U. S. Office of Education, Department of Health, Education and Welfare on December 1, 1969. I will hereafter in this affidavit refer to such proposed plan as the *HEW Plan of December 1* or simply the *HEW Plan.*

The HEW Plan of December 1 was prepared by one Ernest S. Bunch, who styles himself Acting Senior Program Officer, Equal Educational Opportunities. I talked with Mr. Bunch on several occasions although he never asked me for information, advice or assistance. My first contact with Mr. Bunch was on November 17, 1969 very shortly after his arrival in Mobile. Prior to coming to Mobile on that occasion he had no prior contact with Mobile or the Mobile County Public School System.

Based upon my discussions with Mr. Bunch and my subsequent review of the HEW Plan he prepared I am convinced beyond any doubt that he had only a very superficial knowledge of Mobile and the Mobile County Public School System. He obviously has no knowledge whatsoever of many, many factors, the thorough knowledge of

which would be essential to anyone who would attempt to formulate a comprehensive plan or system of student assignment with the object and expectation that it should be educationally sound, administratively feasible or, indeed, practically workable. As a result, the HEW Plan of December 1 that he has formulated, is in its entirety, as well as in its various parts or segments, educationally unsound, administratively infeasible and simply will not work. It disregards and will be detrimental to the best interests of the children concerned, black and white alike and would be destructive to the school system.

The HEW plan is really four different plans which Mr. Bunch has labeled Plan A, Plan B, Plan B-Alternative, and Plan B-I-Alternative. Neither of the four plans is based upon original information, study, statistics or research, because Mr. Bunch made no study, conducted no research and gathered no statistics or information. This in fact is conceded in the explanatory preface contained in the plan itself. All Mr. Bunch did was to take statistical data from a previous HEW report dated July 7, 1969, and then rearrange schools and students by juggling statistics in several different ways to come up with his various alternative plans.

Mr. Bunch's Plan A is really not a plan but merely a statement of statistical data reflecting what he understands the presently existing situation during the current (1969-70) school year. It may or may not be of significance, but even this simple statement of statistical data contains several errors, including the fact that many of his capacity figures are inaccurate.

School Board Affidavit, Filed January 30, 1970

Plan B as a whole is unworkable, for numerous reasons, including the following:

The plan purports, according to its own terms, to be based upon certain specific geographic zones, but no maps or other description reflecting or stating the location of the boundaries of zones is included with the plan.

The statistical data upon which the plan is based is outdated and inaccurate. The original statistical data was gathered and compiled by the School Board in September 1968. It is now totally inaccurate. Spot checks made of this statistical information, after the HEW Plan was filed on December 1, 1969, to determine its accuracy and relevancy indicate that in a number of instances such figures as the total number of students living in a given area (an attendance zone, or a part of an attendance zone), or the ratio of black students to white or vice versa, are in error by as much as 50%.

The plan contemplates, and therefore would require, the utilization of a substantial amount of transportation or bussing, beyond the capacity and capability of the School System's transportation system.

The plan contemplates the closing and non-operation of three school facilities. The inaccurate statistics on which these steps are based perhaps may justify such action, but accurate current statistics and projections for the future indicate that these steps cannot be taken.

The plan, as a consequence of its author's (Mr. Bunch) total lack of any knowledge of virtually all practical functional factors about the school system and the City of Mobile, is based upon the assignment of many children to schools where they simply cannot as a practical matter attend because they simply cannot get to the schools. I

have reference to such factors as: accessibility; traffic flow patterns; the routes of city and other commercial bus transportation; safety hazards such as railroad tracks, major thoroughfares, business and industrial areas, narrow streets without sidewalks, and other dangerous areas; and absolute barriers such as rivers, streams and interstate highways with only limited scattered crossing places.

In addition to those factors above which make the HEW Plan B simply functionally unworkable, there are many features of the plan which, while workable after a fashion, are educationally unsound. Some of these features are:

Grade Structure in the junior high and senior high schools is totally unstable. There are eight different structures; 6-9, 7-8, 6-7, 8 only, 7-12, 9-12, 10-12 and 12 only. Within these structures are seven two grade schools and three schools of only one grade each. Such an arrangement is so totally unsound from an educational standpoint that it is inconceivable anyone could recommend it unless they were doing so under the necessity of achieving some specific result at the expense of normal sound educational practice.

Several school plants are designated for a use for which they were not constructed and to which they cannot be satisfactorily adopted; such as using elementary school buildings for junior high schools (Woodcock, Fonville) and high schools (Bienville, Craighead), junior high school buildings for senior high schools (Carver) and senior high school buildings for junior high schools (Mobile County Training School, Central).

The plan calls for the creation of several so called school complexes, by grouping two, three or even four separate schools together, even though physically they may be

widely separated, and treating them as one large school. For example; (a) the Vigor, Blount, Carver, Bienville High School complex; (b) the Phillips, Washington, Fonville Junior High School complex; (c) the Eanes, Woodcock, Junior High School complex and (d) the Williamson, Craighead High School Complex. These complexes present many administrative difficulties and other serious problems such as unadaptability of facilities (using Craighead Elementary School as half of a high school complex) and the simple inability of students to get to the schools to which they are assigned.

The plan overcrowds many schools and underpopulates others. One example should suffice. The HEW Plan B, according to its statistics contemplates an enrollment of 650 at Prichard Junior High School which has a capacity of 609; whereas accurate current statistics indicate that in the zone Plan B would assign to the school there are actually 1421 students who must attend the school. This means that Plan B has actually assigned 1421 students to a school with a capacity of 609. There are other similar examples. Such an arrangement is simply impossible of implementation.

The Plan makes the implementation of adequate curriculum impossible in a number of schools; makes it impossible to conduct many extra curricular activities; and destroys the very important factor of student and parent identification with the neighborhood school as a center of activity.

The plan virtually destroys the neighborhood school concept.

The plan requires the cross town bussing of many elementary school students thereby forcing the very young children to attend schools far removed from their own

neighborhoods, in unfamiliar surroundings where they inevitably experience insecurity.

I turn now to Plan-B-Alternative. It generally contains the same defects and is subject to the same criticisms as Plan B previously referred to. In addition, upon close examination of the statistical data set out in the plan and a comparison of this data with accurate current data, it is immediately apparent that the statistical data is so grossly inaccurate as to make the plan totally unworkable. This example will suffice to illustrate the point.

The junior high and senior high zones set up by plan B-Alternative are the same zones as were recommended by HEW in its previous report of July 7, 1969, and are reflected in maps attached to that report. The statistical data set out in plan B-Alternative, as well as on the corresponding maps, indicates a total of 1744 students in the zone drawn for Eanes-Woodcock Junior High School Complex (grades 6-9). On the other hand, a current analysis by our pupil personnel division indicates there are actually approximately 2693 students in the zone in grades 6-9. This is an error of over 900 students in the HEW figures. Consider this in light of the fact that the normal capacity of the school is 1760 students and the fatal absurdity of the HEW error becomes apparent. In a similar manner, the statistics in Plan B-Alternative indicate a total of 1291 students in the Mobile County Training School Zone, (in grades 6-7). Whereas, a current statistical analysis indicates that there are actually only approximately 362 such students in the zone. This is an error of over 900 students. In a similar manner plan B-Alternative purports by its statistics to assign 2602 students to the Phillips-Washington-Fonville Complex; whereas, in the

zone drawn in the plan there are actually approximately 3253 students who must attend the complex. This is an error of over 650 students. In a similar manner plan B-Alternative purports by its statistics to assign 2606 students to the Dunbar-Central Complex, while in actuality there are only 2214 students in the zone drawn in the plan; an error of almost 400 students. These same errors are also found in Plan B, as well as in Plan B-Alternative.

There are other similar errors in plan B-Alternative, all of which combine to make the plan impossible of implementation.

I turn now to plan B-I-Alternative. This plan apparently pertains only to elementary schools. It is subject to the same general criticisms already stated, and it contains similar statistical errors, resulting from the fact that the entire plan is based on outdated, inaccurate statistics. It is to me the most objectionable of all of the several plans, because it would require massive cross-town bussing of young elementary school children (the exact amount we are not certain, but approximately 14,000 students in grades 1-5 each year) and because it would shuffle these young children from school to school allowing them to remain in each school for only one or two years, or sometimes three years, at the most. Both of these features are educationally unsound.

Purely as a practical matter, this plan could not be implemented because it is founded on a statistical basis which is inaccurate. There are other practical defects; for example, no provision at all is made for the approximately 100 sixth grade students residing in the South Brookely zone.

School Board Affidavit, Filed January 30, 1970

All of these errors and defects combine to make plan B-I-Alternative educationally unsound, administratively infeasible, and totally unworkable.

A further important factor not accounted for in the HEW plans, and apparently not even considered, is the financial factor. Implementation of the HEW plans would result in the following costs and expenses to the school system, according to a study made by the professional personnel of the Business Affairs Division:

1. Cost of additions to and conversion of school plant facilities in order to meet changes of use and changes of enrollment required in the various HEW plans, $10,495,200.00.

2. Loss of value of buildings and sites to be closed and abandoned, or at least not used, according to requirements of the various HEW plans, $2,145,900.00.

3. Acquisition cost of new busses in order to meet the additional transportation required by the various HEW plans:

Plan B	— $321,457.37	(59 busses)
Plan B-Alternative	— $206,932.74	(38 busses)
Plan B-I-Alternative	—$1,269,484.19	(233 busses)

4. Recurring yearly expense, for operating each year the additional busses required to meet the additional transportation required by the various HEW plans:

Plan B	— $ 92,700.80	(59 busses)
Plan B-Alternative	— $ 59,705.60	(38 busses)
Plan B-I-Alternative	— $366,089.60	(233 busses)

School Board Affidavit, Filed January 30, 1970

The school system simply does not have the capability of meeting these increased costs and expenses, whether it be a matter of immediate or future cash outlay, or the absorption of a loss due to the closing of facilities.

The HEW plans apparently make no provision whatsoever for special classes to accommodate the several hundred exceptional (slow, retarded, handicapped, etc.) students in the system who require special classes, teachers, and arrangements. This is most unfortunate.

The HEW plans are totally devoid of any consideration for the future. As far as I have been able to determine from examination and study of the HEW plans, the services of the Mobile Housing Board and the City Planning Commission were not utilized or considered in developing either of the three alternative plans. The original source material from which the plans were developed was prepared by HEW representative Dr. Joe Hall in connection with his previous report of July 7, 1969. In his deposition testimony Dr. Hall admitted that these agencies were not consulted. As a result, expected residential growth in the downtown area is not allowed for in the HEW plans; on the contrary, rather than allowing for anticipated growth, the HEW plans would unwisely close schools in this area.

After a close and careful study of all of the several different plans submitted to the District Court by HEW on December 1, 1970, it is my firm opinion that all of these plans are, as submitted to the court, educationally unsound and administratively infeasible; and that they are based upon statistical data which is to a large extent inaccurate, or at least it is inaccurately stated in the plans, so that the plans are incapable of effective implementation.

School Board Affidavit, Filed January 30, 1970

I have had occasion to examine a copy of a document given by counsel for the United States Department of Justice to the District Court in conference on January 22, 1970; the document is entitled Projected Enrollment Changes between 1969 and 1970. I have examined the document and have compared the figures contained therein with information gathered and maintained on a current basis by the professional educators and statisticians of our Pupil Personnel Division. Based upon this study and comparison, it is apparent to me that the projections and figures put forth in that document in the columns labeled HEW plan B, HEW plan B-Alternative, and HEW Plan B-I-Alternative, are based upon old, outdated statistical data and that they are inaccurate.

I participated in the development and preparation of the revised desegregation plan submitted by the School Board to the District Court on December 1, 1969. I am aware and here state that during this process a conscientious effort was made to increase the extent of integration in the school system and to create a unitary school system. In comparing this plan with previous plans filed by the Board or ordered by the Court it is immediately apparent that many of the zones, particularly in the elementary schools, are substantially similar. This results from a recognition by professional educators of the educational soundness of the neighborhood school concept, as well as the practical necessity of developing zones and boundaries with due regard to a multitude of purely practical factors such as capacities of schools, size of zones, the location and density of population, accessibility, traffic flow patterns, the routes of commercial transportation, the location of railroad tracks, ma-

jor thoroughfares, business and industrial areas, the nature and condition of routes of travel, other safety hazards and barriers such as rivers and streams and interstate highways. The fact that the zones are similar however, cannot be taken to mean that they are the same zones from the racial standpoint, because the population in the area of the county where the zones here concerned are located is to a large extent of a transitory nature to begin with, plus the fact that most of this area is undergoing a subbstantial and rapid overall ethnic change. Therefore, a zone previously drawn in a particular manner in order to avoid integration could now be drawn in the exact same manner and yet create or increase the extent of integration.

I have also had occasion to examine and study the desegregation plan set forth by the District Court in its order of January 31, 1970, and the statistical data being prepared by the professional educators and statisticians of our Pupil Personnel Division based upon the contents of that plan. From this examination and study, it is apparent to me that the statistical extent of integration is larger and more extensive under the court ordered plan than under the proposed revised plan filed by the Board on December 1, 1969. In studying this plan it is apparent to me that the court devised it with the conscious intent of increasing the extent of integration and creating a unitary school system.

/s/ James A. McPherson
James A. McPherson

School Board Motion for Stay, Filed March 17, 1970

Comes now the Board of School Commissioners of Mobile County and files this Motion For Stay and would respectfully show unto Your Honor as follows:

I.

Pursuant to 28 U.S.C. 2201, and such other statutes or rules of law as may be applicable, Petitioner, the Board of School Commissioners of Mobile County, is preparing an action to be filed as soon as possible in this Honorable Court calling upon the court to construe, determine and declare the constitutionality of the law recently enacted by the Legislature of the State of Alabama, a true copy of which is attached hereto, marked Exhibit A.

II.

Petitioner is a public body corporate and an agency of the State of Alabama, and is by law invested with the power and responsibility of operating the public schools of Mobile County, Alabama.

III.

Heretofore, on January 31, 1970 this court entered an order by which it required the Petitioner to undertake and carry out a reorganization of attendance zones and a reassignment of students in a portion of the Public School System of Mobile County. A copy of this order is attached hereto, marked Exhibit B. In order to comply with the terms and provisions of this order, Petitioner will of necessity be required to assign particular students to attend particular schools on account of their race, and will be required

to assign particular students to attend particular schools for the purpose of achieving equality in attendance or increased attendance or reduced attendance of persons of a particular race at these schools, and will be required to reorganize school attendance zones for such purposes.

IV.

Heretofore, on February 4, 1970, Petitioner adopted a resolution instructing the Superintendent of Schools and his staff to comply with this January 31, 1970 Order of the Court, and to complete implementation of the order of the court by March 16, 1970.

V.

Heretofore, on, to wit, February 27, 1970 the Legislature of the State of Alabama passed an act relating to the assignment of public school students within the State of Alabama, declaring that no student shall be assigned to or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors, or national origins; and no school district, school zone or attendance unit, by whatever name known, shall be established, re-organized or maintained for any such purpose. This act was signed into law by the Governor of the State of Alabama on, to wit, March 4, 1970. It is thus a valid law of the State of Alabama. A copy of this law is attached hereto, marked Exhibit A.

School Board Motion for Stay, Filed March 17, 1970

VI.

Heretofore, on March 4, 1970, Petitioner adopted a resolution instructing the Superintendent of Schools to comply with this law of the State of Alabama, as it was bound to do, being an agency of the State itself.

VII.

Heretofore, on March 16, 1970, this Honorable Court taking cognizance of both its own order of January 31, 1970 and of the act of the Alabama Legislature signed into law by the Governor on March 4, 1970, but without seeking to determine the constitutionality of the law, or declare the unconstitutionality thereof, entered an order requiring Petitioner to follow and comply with its previous order of January 31, 1970, within three days, failing in which a fine of $1,000 per day is assessed against each of the five members of the Board of School Commissioners until there is compliance. A copy of this order is attached hereto, marked Exhibit C.

VIII.

Petitioner desires to obey the law, however, by this combination of circumstances Petitioner is placed in a position of unavoidable conflict. Petitioner cannot at the same time be or remain in compliance with the Alabama Law and the orders of this Honorable Court hereinabove referred to. If Petitioner complies with one it will automatically be in disobedience to the other; and vice versa. The only way in which the conflict can be resolved is for this court to consider and determine the matter of the

constitutionality of this Alabama Law. To this end Petitioner is preparing for the purpose of filing in this Honorable Court as soon as possible an action calling upon this court to construe, determine and declare the constitutionality of the Alabama Law.

IX.

Petitioner respectfully moves that enforcement of the orders of this Honorable Court dated January 31, 1970 and March 16, 1970 be stayed pending the filing of such action, a hearing in the action and a determination of the issues presented in that cause.

School Board Motion for Stay, Filed March 17, 1970

EXHIBIT A

Enrolled, AN ACT, TO PREVENT DISCRIMINATION ON ACCOUNT OF RACE, COLOR, CREED OR NATIONAL ORIGIN IN CONNECTION WITH THE EDUCATION OF THE CHILDREN OF THE STATE OF ALABAMA. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: *Section* 1. No person shall be refused admission into or be excluded from any public school in the State of Alabama on account of race, creed, color or national origin. *Section* 2. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors or national origins; and no school district, school zone or attendance unit, by whatever name known, shall be established, reorganized or maintained for any such purpose, provided that nothing contained in this section shall prevent the assignment of a pupil in the manner requested or authorized by his parents or guardian, and further provided that nothing in this section shall be deemed to affect, in any way, the right of a religious or denominational educational institution to select its pupils exclusively or primarily from members of such religion or denomination or from giving preference to such selection to such members or to make such selection to its pupils as is calculated to promote the religious principle for which it is established. *Section* 3. The provisions of this Act are severable. If any part of the Act is declared in-

valid or unconstitutional, such declaration shall not affect the part which remains. *Section* 4. All laws and parts of laws in conflict herewith are hereby repealed. *Section* 5. This Act shall become effective upon its passage and approval by the Governor, or upon its otherwise becoming a law.

School Board Objection to a Portion of the Record, Filed March 27, 1970

Heretofore, on March 19, 1970, by letter to the Clerk of the District Court, Appellant (The United States Department of Justice) has sought informally to supplement the Record being certified to the Court of Appeals by furnishing the Clerk of the District Court with certain copies of maps and statistical tables and requesting their certification.

Objection must be taken to this *informal creation* of a record for certification to the court. Defendant would respectfully show:

1. The documents have not been admitted into evidence by the District Court; nor were they even offered into evidence.

2. Defendants have not been served, formally or informally, with a copy of the documents.

3. The documents have not been properly authenticated.

4. There is no testimony before the court as to the accuracy of these documents, how they were prepared or by whom, or supporting them in any other manner.

WHEREFORE, Defendant respectfully moves:

(a) That the documents concerned not be certified to the Court of Appeals.

(b) That the documents concerned be returned to counsel because they are not a part of the record in this cause.

(c) That the Court act upon this motion immediately.

District Court Order of August 12, 1970

Pursuant to Order of this Court of July 28, 1970, the following are hereby appointed as a Bi-Racial Committee in this cause for the purposes hereinafter recited:

Dr. Sanford D. Bishop
Mr. Isom Clemon
Mr. M. C. Farmer
Mrs. H. Eugene Gibbons
Mrs. T. C. Gill
Mr. Arthur Outlaw
Bishop W. T. Phillips
Mr. O. B. Purifoy
Mr. H. Minge Reed, Jr.
Mr. Beverly R. Wilson, Jr.

This Committee shall have the responsibility:

(1) To recommend to the Mobile County School Board and the Court ways to maintain a unitary system.

(2) To review the operation of the majority to minority transfer rule and the transportation system.

(3) To assist the Mobile County School Board in presenting to the Court problems encountered by the Board in the operation of its desegregation plan heretofore or hereafter modified and approved by this Court or the Court of Appeals for the Fifth Circuit.

(4) To consider the selection of school sites and suggest other special assignments as the Court may direct.

The Committee is authorized to make recommendations to the School Board and the Court in connection with these activities. The Chairman is to alternate annually between the races. Mr. Beverly R. Wilson, Jr. is appointed Chairman for the ensuing twelve months.

DONE at Mobile, Alabama, this the 12th day of August 1970.

DANIEL H. THOMAS
United States District Judge

District Court Order of August 12, 1970

Pursuant to the Order of the United States Court of Appeals for the Fifth Circuit of August 4, 1970, in this case, the Order of this Court of July 13, 1970, as amended July 30, 1970, is FURTHER AMENDED so that the elementary schools known as Robbins and Hamilton are to be paired.

DONE at Mobile, Alabama, this the 12th day of August 1970.

DANIEL H. THOMAS
United States District Judge

Court of Appeals Order of September 18, 1970

Before:

BELL, AINSWORTH, and GODBOLD,

Circuit Judges.

BY THE COURT:

IT IS ORDERED that intervenors-appellees' motion for a stay of this court's order of August 28, 1970, pending the decision on the petition for rehearing en banc is hereby DENIED.

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

Supreme Court of the United States

No. 436 ------ , *October Term, 19* 70

Birdie Mae Davis, et al.,

Petitioners,

v.

Board of School Commissioners of Mobile County, et al.

ORDER ALLOWING CERTIORARI. Filed October 6 ---------- , 19 70.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth ----------. Circuit is granted. The case is set for oral argument immediately following No. 420.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
JUL 23 1970
E. ROBERT SEAVER, C

IN THE

Supreme Court of the United States

October Term, 1970

No. 436

BIRDIE MAE DAVIS, *et al.*,

Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al.*

MOTION TO ADVANCE AND PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Reasons for Granting the Writ:

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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. .....

BIRDIE MAE DAVIS, *et al.*,

Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al.*

MOTION TO ADVANCE

Petitioners, by their undersigned counsel, respectfully move that the Court advance its consideration and disposition of this case, which presents issues of national importance about which the court below and other United States Courts of Appeals are divided in their interpretation of *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430 (1968), *Alexander* v. *Holmes County Bd of Educ.*, 396 U.S. 19 (1969) and *Carter* v. *West Feliciana Parish School Bd.*, 396 U.S. 296 (1970). These issues require prompt resolution by this Court for the reasons stated in the annexed Petition for Writ of Certiorari.

WHEREFORE, petitioners pray that the Court:

1. Consider this motion immediately;

2. shorten the time for filing respondents' response to the annexed petition and

3. consider the annexed petition at the Court's earliest possible opportunity.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1970

No. .....

BIRDIE MAE DAVIS, *et al.*,

Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on June 8, 1970. Petition for rehearing was denied June 29, 1970.

Opinions Below

The opinions of the courts below directly preceding this petition[1] are as follows:

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[1] Earlier proceedings in this case are reported as *Davis* v. *Board of School Comm'rs of Mobile County*, 318 F.2d 63 (5th Cir. 1963); 322 F.2d 356 (5th Cir.), stay denied, 11 L.Ed.2d 26 (Mr. Justice Black, Circuit Justice), cert. denied, 375 U.S. 894 (1963), rehearing denied, 376 U.S. 898 (1964); 333 F.2d 53 (5th Cir.), cert. denied, 379 U.S. 844 (1964); 364 F.2d 896 (5th Cir. 1966); 393 F.2d 690 (5th Cir. 1968); 414 F.2d 609 (5th Cir. 1969); sub nom. *Singleton* v. *Jackson Municipal Separate School Dist.*, 421 F.2d 1211 (5th Cir.), interim relief ordered, 38 U.S.L.W. 3220 (1969), rev'd sub nom. *Carter* v. *West Feliciana Parish School Bd.*, 396 U.S. 290 (1970).

1. Opinion and order of the District Court filed January 31, 1970, unreported (1a-7a).
2. Opinion of the Court of Appeals filed June 8, 1970, not yet reported (8a-22a).
3. The judgment of the Court of Appeals (23a-24a).
4. Orders of the Court of Appeals on the petition for rehearing (8a-22a).

Jurisdiction

The judgment of the Court of Appeals was entered on June 8, 1970 (24a). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Question Presented

Upon request from the courts below, the United States Department of Health, Education, and Welfare developed several plans to desegregate public schools in Mobile County, Alabama. One plan integrated each school in the system by establishing a number of school pairings and clusters which necessitate the incidental transportation of both black and white students. This technique of student assignment—the use of school attendance zones with noncontiguous parts and the transportation of students—had long been used in the Mobile school system to maintain segregated schools. In spite of this history and without any evidentiary hearing in the District Court, the Court of Appeals rejected this H.E.W. plan and ordered the implementation of a plan which leaves 7,725 black students in eight all-black schools. The rejection of the H.E.W. plan was based solely on the Court's deference to a hypothetical "neighborhood school concept" (13a) which Mobile had not theretofore had.

The fundamental question presented to this Court is whether black students are denied the equal protection of the laws when they continue to be assigned to segregated black schools despite the availability of an alternative method of student assignment which would desegregate every school in the system and which is proved feasible by the school board's past use of the same assignment techniques.

Constitutional Provision Involved

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Statement

1. A Brief Overview of the School System.

Mobile has a combined rural and metropolitan school system serving the whole of Mobile County. It is the largest school system in Alabama; 91 schools in the system served 73,504 students during 1969-70. The total number of white students is 42,620, or 58% of all students and the total number of black students is 30,884, or 42% of all students.

Throughout the litigation to desegregate Mobile's schools, the rural and metropolitan portions of the system have been treated separately. Since September 1969 the rural portion of the system has been desegregated adequately and this petition concerns only the metropolitan area comprised of the contiguous cities of Mobile, Pritchard and Chickasaw. Within the metropolitan area there are 65 schools serving 54,913 students, of whom 27,769 or 50.5% are white and 27,144 or 49.5% are black.

In addition to the rural-metropolitan division, another division has more recently been advanced in this litigation. This newer division is between the eastern and western parts of the metropolitan area with Interstate Highway I-65 used as a north-south divider. The western part is predominantly white with 17 schools serving 13,875 students, of whom 12,172 or 88% are white and 1,703 or 12% are black. The eastern part is majority black with 48 schools serving 41,038 students, of whom 15,597 or 38% are white and 25,441 or 62% are black.

The controversy which led to this Court's decision in *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970), concerned the decisions of the courts below to treat separately the predominantly white and majority black parts of metropolitan Mobile by permitting the formulation of separate plans for each, and to delay desegregating the majority-black part until 1970-71. It is the continuing effort by the school board and the courts below to subdivide the metropolitan area which necessitates action by this Court.

2. Summary of Proceedings in the Courts Below.

This action by black parents and students to desegregate Mobile County's public schools began in 1963. The United States intervened in 1967 and successive groups of white parents intervened in 1968 and earlier this year. The current phase of this litigation began with the Court of Appeals' June 3, 1969 decision.

The main issue before the Court of Appeals at that time was whether the School Board and the District Court had complied with a previous decision of the Court of Appeals[2] by establishing school attendance zones for elemen-

[2] The June 3, 1969 decision is reported at 414 F.2d 609; the previous decision is reported at 393 F.2d 690.

tary and junior high schools, and maintaining freedom of choice for high school students in metropolitan Mobile. A second issue was retention of freedom of choice for all students in rural Mobile County. The Court of Appeals found that the District Court had "ignored the unequivocal directive to make a conscious effort in locating attendance zones to desegregate and eliminate past segregation." 414 F.2d at 611. Freedom of choice in metropolitan high schools and all rural schools was also held to be unacceptable. Accordingly, the Court of Appeals ordered the prompt formulation of a plan "to fully and affirmatively desegregate all public schools in Mobile County, urban and rural . . ." and directed the District Court to request the Office of Education of the United States Department of Health, Education, and Welfare to collaborate with the School Board and submit its own desegregation plan if agreement with the Board was not possible. *Ibid.*

H.E.W. and the School Board could not agree on a plan and H.E.W. submitted its own county-wide desegregation plan on July 10, 1969. The plan provided for zoning all schools in rural and metropolitan Mobile (some schools would be paired within zones), closing four black schools in eastern Mobile, and transporting 2,000 black students from the closed schools to white schools in the western and southern parts of the metropolitan area. Petitioners sought implementation of the plan with amendments to correct two deficiencies: (1) the plan retained five large all-black elementary schools serving 5,500 students because H.E.W. was unwilling to recommend the transportation of white students in addition to the transportation of black students; and (2) the plan deferred desegregation in eastern metropolitan Mobile, where 85% of the system's black students live, until 1970-71. On August 1, 1969, without a hearing, the District Court ordered the implemen-

tation of H.E.W.'s plan for rural and western metropolitan Mobile, as modified by the Court to eliminate the H.E.W. proposal to transport 2,000 black students from eastern to western metropolitan Mobile. The District Court did accept H.E.W.'s plan to defer desegregation in eastern metropolitan Mobile until 1970-71.

Petitioners appealed the delay, the Court of Appeals affirmed,[3] Mr. Justice Black ordered the School Board to prepare for desegregation by February 1, 1970,[4] and this Court reversed the delay.[5] The case returned to the District Court in late January 1970 for second semester implementation of a plan to complete the desegregation of Mobile's schools.

In the meanwhile, H.E.W. had submitted two additional plans to the District Court on December 1, 1969.[6] Using the July 10, 1969 plan as a base (and labelling it Plan B), H.E.W. proposed one modification (Plan B Alternative) which totally eliminated the transportation of students by continuing in operation the four black schools which the July, 1969 plan closed. Plan B Alternative would leave nine all-black schools serving 7,971 students (15a). The second modification (Plan B-1 Alternative) recommended closing two black schools, and pairing or clustering all other black schools in eastern Mobile with white school in western or southern Mobile. Transportation of both

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[3] *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969).

[4] 38 U.S.L.W. 3220 (1969).

[5] *Carter v. West Feliciana Parish School Board*, 396 U.S. 290 (1970).

[6] These additional H.E.W. plans were submitted in accordance with the District Court's August 1, 1969 decision which established December 1, 1969 as the time for submitting plans for the 1970-71 school year.

black and white students would be required and all schools in the system would be integrated (*Ibid.*).[7]

The same day, the School Board submitted its own plan for eastern Mobile. It assigned 18,832 black students to 21 all or nearly all black schools.[8]

The District Court called attorneys for all parties to a "pre-trial conference" in chambers on January 23, 1970 (2a). At the conference the following positions were taken: (1) petitioners contended that the elementary school provisions of H.E.W.'s Plan B-1 Alternative and the junior and senior high school provisions of H.E.W.'s Plan B should be implemented forthwith, but if the transportation proposals made immediate relief impossible and the District Court selected another plan *pendente lite,* then a hearing should be promptly set to determine a permanent plan; (2) the United States proposed that the H.E.W. plan involving no transportation (Plan B Alternative) be implemented *pendente lite* while discovery and hearings on a permanent plan proceeded; (3) the School Board argued against any changes in its operations; and (4) the District Court stated it would not consider the plans petitioners supported and that the School Board's December 1, 1969 plan was unacceptable without modifications.

The District Court concluded the conference by asking the School Board for modification of its December 1, 1969 plan and the United States "for [a] revision of the H.E.W. plan which the government thought should be followed for the remainder of the present school year" (2a). The

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[7] Plan B-1 Alternative involved only elementary schools. For junior and senior high schools it proposed to incorporate the provisions of Plan B.

[8] Petitioners, despite repeated requests, were not served with a copy of the Board's plan and had to move on January 2, 1970 for an order compelling service which was not made until the District Court granted the motion February 27, 1970.

School Board failed to respond to the court's request.[9] The United States submitted a revision of H.E.W.'s no-transportation alternative (Plan B Alternative) "as a plan which could be implemented immediately to remain in effect only for the present school year." [10] Then, despite its own characterization of the January 23 conference as a "pretrial conference" and both petitioners' and the United States' clearly stated position that plaintiffs sought only mid-year relief *pending* hearings on a permanent desegregation plan, the District Court without an evidentiary hearing entered an order on January 31, 1970 which purported to finally disestablish the dual system in Mobile (1a-7a).

Mindless of its expressed view at the January 23, 1970 conference that the Board's proposals were unacceptable, the District Court's order adopted the School Board's December 1, 1969 plan with only several modifications. The order left 18,623 black students, or 60% of the system's black students, in 18 all- or nearly all-black schools (18a-22a). The court dismissed H.E.W.'s Plan B-1 Alternative, which would establish pairings and clusters of non-contiguous zones and require transporttion of students, by making the general observation that it "would require busing of children from areas of the city to a different and unfamiliar area" (3a) and by singling out one[11] of

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[9] In its January 31, 1970 order the District Court commented on the Board's failure:

> "The school board and its staff of administrators and professional educators, who know the Mobile Public School System best, who have all the facts and figures which are absolutely necessary for a meaningful plan, have not assisted or aided the Court voluntarily. Consequently, the plan which is by this decree being ordered is not perfect . . ." (2a-3a).

[10] Brief for the United States in the Court of Appeals, p. 22.

[11] The one elementary arrangement which the court singled out involved three schools, two white and one black, in a cluster. All

the sixteen H.E.W. proposed pairs or clusters, presumably to illustrate the court's conclusion that H.E.W.'s proposal was "motivated for the sole purpose of achieving racial balance" (4a). Similarly, the court dismissed H.E.W.'s Plan B for junior high schools by citing but one atypical proposal to establish a cluster of three junior high schools, stating that in the court's view "the Supreme Court has not held that such drastic techniques are mandatory for the sole purpose of achieving racial balance" (4a).

Petitioners, the United States, and the School Board appealed. Petitioners challenged both the failure of the District Court to conduct an evidentiary hearing before ordering a final plan and the court's failure to require the School Board to implement H.E.W.'s plan to establish non-contiguous pairings and clustering and transport both black and white students to achieve complete desegregation. The United States, while acknowledging that the School Board's past practices indicate that any of H.E.W.'s plans would be feasible, asked the Court of Appeals to require the implementation of H.E.W.'s sole no-transportation plan for the negative reason that "no argument can be made that plan B Alternative, which is the most modest plan,

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students in the cluster would attend one of the white schools for the first and second grades, the second white school for the third grade, and the black school for grades four through six (4a). Of the remaining fifteen elementary school arrangements in H.E.W.'s Plan B-1 Alternative, only one other was similar. Eleven involved only two schools with all students attending either the black or white schools for two or three years and then attending the other school for the remaining elementary school grades. Three other arrangements involved three schools but required attendance at only two schools. Under these arrangements all students in the cluster would attend one school for grades one and two and then divide, with one-half attending the second school in the cluster for grades three through five and the other half attending the third school for the same grades. Neither the simple pairing of two schools serving non-contiguous black and white zones nor this latter type of clustering were discussed by the District Court.

is either educationally unsound or administratively infeasible." [12] The School Board, although cross appealing, sought affirmance of the District Court's order.

The Court of Appeals, after remanding for further findings of fact,[13] decided the appeal on June 8, 1970. The court defined its judicial task in these words:

> We have examined each of the plans presented to the district court in an effort to determine which would go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept of the school system (13a).

In the court's view the neighborhood assignment system allows two alternatives. One alternative requires the assignment of each student to the school nearest his home with such assignments limited only by the capacity of the schools. *Ellis* v. *Board of Public Instruction of Orange County, Florida,* 423 F.2d 203, 207 (5th Cir. 1970). The other alternative is the establishment of attendance zones "on a discretionary basis as distinguished from a strict neighborhood assignment. . . ." *Mannings* v. *Board of Public Instruction of Hillsborough County, Florida,* No. 28643 (5th Cir., May 11, 1970) (Slip Op., p. 6). Mobile, the

[12] Brief for the United States in the Court of Appeals, p. 47.

[13] The remand was required by the District Court's failure to determine how the School Board's plan, which it adopted, would affect the racial composition of any of the system's schools. The remand also directed the District Court to make findings on the extent of desegregation of faculty, transportation and extracurricular activities. Petitioners moved in the District Court on April 6, 1970 to establish a procedure whereby after the Board submitted proposed findings of fact an evidentiary hearing would be held. The School Board submitted an affidavit which the District Court accepted *in toto* "excluding self-serving declarations and speculative opinions." Order of April 14, 1970. Petitioners' motion for a hearing was denied the same day.

court concluded, had itself chosen not to use "the strict neighborhood assignment system" but instead uses "discretionary zones lines" (13a). As Mobile had made that decision for itself, the Court ruled that the desegregation plan "can be greatly improved by pairing some schools located in proximity to each other . . . [and] also be improved by recasting the grade structure in some of the buildings but, at the same time, maintaining the neighborhood school concept" (*Ibid.*).

The plan which found favor with the court was the plan submitted by the United States as a modification of H.E.W.'s no-transportation Plan B Alternative. The plan left 8,515 black students in all–or nearly all–black schools (*Ibid.*); the court required modifications of the plan to reduce the number of black students in all-black schools to 7,725 students in 8 elementary schools, which it noted amounted to 25% of Mobile's black students being assigned to all-black schools (24a). In terms of elementary school students in metropolitan Mobile, the plan results in the assignment of 58% of black elementary school students to all-black schools.

These results were justified by the court in four ways: (1) "every Negro child would attend an integrated school at some time during his education career" (13a); (2) "the all Negro student body schools which will be left after the implementation of the Department of Justice plan, as modified, are the result of neighborhood patterns" (15a-16a); (3) the remaining segregation can be "alleviated" through a policy allowing black students to transfer to white schools with transportation provided (16a); and (4) the situation may be further alleviated by the establishment of a bi-racial committee to serve in an "advisory capacity" to the School Board (*Ibid*).

The Court of Appeals remanded the case to the District Court with instructions to implement a new plan by July 1, 1970. On remand the District Court ordered the implementation of the plan submitted by the United States except for amendments to two school districts which the Court will make.

3. The Techniques of Segregation.

Although the District Court has not permitted any evidentiary hearings on a desegregation plan since the summer of 1968, the record of the extensive hearing that summer and in previous years fully documents the various techniques used by the School Board to segregate Mobile's schools.[14]

a. *Grade Structures.* The Mobile school system has used an extraordinarily wide variety of grade structures, including schools serving grades 1-5, 1-6, 1-7, 1-8, 1-9, 1-12, 2-5, 6-7, 6-8, 6-9, 6-10, 6-12, 7, 7-8, 7-9, 7-11, 7-12, 8-12, 9-12, 10-11, 10-12. By selectively decreasing or increasing the number of grades served at particular schools, the School Board has increased or decreased the area served by the school to coincide with racial residential patterns (R. 26,886 Vol. V, pp. 1527-1534). For example, the School Board established the Hillsdale School as the only metropolitan school serving grades 1-12 in order to restrict its attendance area to a small black community in the western part of the metropolitan area. In downtown Mobile, the School Board between 1962 and 1967 candidly reorganized grade structures, and assigned portables and closed schools, to maintain segregated schools in the face of rapidly shifting racial residency patterns (R. 26,886

[14] This portion of the petition is a summary of a longer analysis of these techniques contained in the Brief for the United States in the Court of Appeals, pp. 4-18. Citations to R. 26,886 are to the record before the Court of Appeals in *Davis* v. *Board of School Commissioners of Mobile County*, 414 F.2d 609 (5th Cir. 1969).

Vol. VI, pp. 25-35). School segregation was also the objective in arranging grade structures at four white schools surrounding a black school in northern metropolitan Mobile to enable white students to attend one white school for grade 6, a second for grades 7 and 8, a third for grade 9, and a fourth for grade 10, all in order to prevent their attendance at a nearby black school (R. 26,886 Vol. IV, pp. 1331-32).

b. *Zones.* The splitting of school attendance zones (i.e., non-contiguous zones) has been a common method of school assignment in Mobile. As many as nineteen non-contiguous zones were used in one year, 1964-65, including one split zone in which the parts were separated by over 11 miles.[15] Transportation between split zones was provided by the School Board (R. 26,886 Vol. I, pp. 5-6).

c. *Portable Classrooms.* The selective assignment of portable classrooms in order to expand the capacity of black schools as a way of avoiding the assignment of black students to under-utilized nearby white schools has been a method of maintaining segregated schools (R. 26,886 Vol. I, pp. 90-93).

d. *Transportation.* Busing has not been limited to the rural parts of the school system. During 1966-67 the School Board bused 7,116 students daily in the metropolitan area. Approximately 2,350 of these students were bused because of non-contiguous zoning (R. 26,886 Vol. I, pp. 5-6) A considerable amount of busing was designed to maintain segregation. As an example, 582 black students were bused over 6 miles from rural Saraland and Satsuma to a black school in metropolitan Mobile to prevent integration at white schools in their communities (*Ibid*).

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[15] The facts were culled from numerous exhibits and appear in summary form in the Brief of the United States in the Court of Appeals, pp. 7-9 and Appendix C.

e. *Construction.* New schools in Mobile have been located in order to serve only selected racial groups. For example, although population movements in downtown Mobile left unused classrooms in white schools, the Board embarked on a plan during the 1966-67 school year to construct four schools for black students in order to avoid the reassignment of blacks at overcrowded black schools to available space at white schools (R. 26,886 Vol. VI, pp. 25-35). A few years earlier, in 1963, the School Board sought to justify to this Court its failure to even begin desegregation by pointing to its ongoing construction of "colored schools." Justice Black's opinion in chambers recited the Board's contentions:

> Yet this record fails to show that the Mobile Board has made a single move of any kind looking towards a constitutional public school system. Instead, the Board in this case has rested on its insistence that continuation of the segregated system is in the best interests of the colored people and that desegregation would "seriously delay and possibly completely stop" the Board's building program "particularly the improvement of and completion of sufficient colored schools which are so urgently needed." In recent years, more than 50% of its building funds, the Board pointed out to the parents and guardians of its colored pupils, had been spent to "build and improve colored schools," and of eleven million dollars that would be spent in 1963, over seven million would be devoted to "colored schools."
>
> . . . .
>
> It is quite apparent from these statements that Mobile County's program for the future of its public school system "lends itself to perpetuation of segregation" . . . *Davis* v. *Board of School Commissioners of Mobile County,* 11 L. Ed. 2d 26, 28 (1963)

REASONS FOR GRANTING THE WRIT

I.

The Decision Below Conflicts With Rulings Both of This Court Since *Brown* and of Other Courts of Appeals. It Absolves School Boards of Responsibility to Provide Equal Educational Opportunity to Black Students Contained in Segregated Schools by "Neighborhood Residential Patterns" Which Are Themselves the Result of State Action Combined With Private Discrimination.

Since *Brown* v. *Board of Educ.*, 347 U.S. 483 (1954), this Court has consistently invalidated subterfuges by which school districts have sought to maintain racially separate and identifiable schools, whether such devices relied upon school board or private initiative to produce the desired result. *E.g., Cooper* v. *Aaron*, 358 U.S. 1 (1958) (delay sought due to community opposition); *Goss* v. *Board of Educ. of Knoxville*, 373 U.S. 683 (1963) (minority-to-majority transfer allowing avoidance of integration); *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430 (1968) (free transfer plan permitting same result); *cf. Calhoun* v. *Latimer*, 377 U.S. 263 (1964) (grade-a-year desegregation). Lower courts have done the same. *E.g., Dove* v. *Parham*, 282 F.2d 256, 258 (8th Cir. 1960) (pupil placement); *Brewer* v. *School Bd. of City of Norfolk*, No. 14, 544 (4th Cir., June 22, 1970) (*en banc*) (assignments based on social class); *Monroe* v. *Board of Comm'rs of Jackson*, No. 19720 (6th Cir., June 19, 1970) (same); *Stell* v. *Savannah-Chatham County Bd. of Educ.*, 333 F.2d 55, 62 (5th Cir.), *cert. denied*, 379 U.S. 933 (1964) (assignment based on purported intelligence differences among races), *compare Anthony* v. *Marshall County Bd. of Educ.*, 419

F.2d 1211 (5th Cir. 1969), *rev'd on other grounds sub nom. Carter* v. *West Feliciana Parish School Bd.*, 396 U.S. 290 (1970) (assignment by achievement test scores); *United States* v. *Lincoln County Bd. of Educ.*, 301 F. Supp. 1024 (S.D. Ga. 1969) (same); *McFerren* v. *Fayette County Bd. of Educ.*, Civ. No. C-65-136 (W.D. Tenn., December 24, 1969) (sex segregation).

The progress so far been realized in converting dual school systems into unitary ones from which all vestiges of discrimination have been extirpated, *Green* v. *County School Bd. of New Kent County, supra,* is severely jeopardized by the decision below and others like it which have seized upon a justification for continued segregation in the so-called "neighborhood school concept." [16]

This concept, whatever it means—imprecision is one of its characteristics, *compare Ellis* v. *Board of Public Instruction of Orange County, supra, with Mannings* v. *Board of Public Instruction of Hillsborough County, supra*—has been advocated in the past as in the present by those seeking to preserve segregation. As former Chief Judge Tuttle observed earlier in this very litigation, the "neighborhood school is a euphemism for separation."

> Both in the testimony and in the briefs, much is said by the appellees about the virtues of "neighborhood schools." Of course, in the brief of the Board of Education, the word "neighborhood" doesn't mean what it usually means. When spoken of as a means to require Negro children to attend a Negro school in the vicinity

[16] *E.g., Ellis* v. *Board of Public Instruction of Orange County, supra; Mannings* v. *Board of Public Instruction of Hillsborough County, supra; Carr* v. *Montgomery County Bd. of Educ.*, No. 29521 (5th Cir., June 29, 1970); *Bradley* v. *Board of Public Instruction of Pinellas County*, No. 28639 (5th Cir., July 1, 1970); *Ross* v. *Eckels*, Civ. No. 10,444 (S.D. Tex., June 1, 1970); *Calhoun* v. *Cook*, Civ. No. 6298 (N.D. Ga., Feb. 19, 1970); *Valley* v. *Rapides Parish School Bd.*, Civ. No. 10,946 (W.D. La., July 5, 1970).

of their homes, it is spoken of as a "neighborhood" school plan. When the plan permits a white child to leave his Negro "neighborhood" to attend a white school in another "neighborhood" it becomes apparent that the "neighborhood" is something else again. As every member of this court knows, there are neighborhoods in the South and in every city of the South which contain both Negro and white people. So far as has come to the attention of this court, no Board of Education has yet suggested that *every* child be required to attend his "neighborhood school" if the neighborhood school is a Negro school. Every board of education has claimed the right to assign every white child to a school other than the neighborhood school under such circumstances. And yet, when it is suggested that Negro children in Negro neighborhoods be permitted to break out of the segregated pattern of their own race in order to avoid the "inherently unequal" education of "separate educational facilities," the answer too often is that the children should attend their "neighborhood school."

So, too, there is a hollow sound to the superficially appealing statement that school areas are designed by observing safety factors such as highways, railroads, streams, etc. No matter how many such barriers there may be, none of them is so grave as to prevent the white child whose "area" school is Negro from crossing the barrier and enrolling in the nearest white school even though it be several intervening "areas" away.

Davis v. *Board of School Comm'rs of Mobile County*, 364 F.2d 896, 901 (5th Cir. 1966).

It is only now, after the decisions of this Court in *Alexander, Carter* and *Northcross* have made unmistakable the

requirement of integration, that the "neighborhood school" is offered as an inviolate principle of student assignment. Like its predecessors—pupil placement and similar schemes —its purpose is obvious: to provide a superficially neutral gloss to the maintenance of racially separated schools.

Manipulating the "neighborhood school concept" today, as many school boards seek to have it applied, and as the Court of Appeals used it, means in almost every instance (except in small, rural districts) that a significant segment of a school district's black student population will continue to be assigned to all-black schools. This departure from the clear mandates of this Court from *Brown* to *Northcross* is offered as justifiable because of "neighborhood residential patterns."

Nowhere is this new rule more anomalous in result than in Mobile. The district court had before it a number of different desegregation plans for the Mobile school system, submitted under court order because freedom of choice had failed to change Mobile's dual school system. Yet neither the district court nor the Court of Appeals chose the plan which would integrate every school and destroy racial identifiability in the school system. Instead, both courts left black students and white students alike in segregated schools to preserve what they erroneously perceived to be Mobile's "neighborhood school system."

But we do not deal here, as Judge Tuttle recognized four years ago, with a school system in which the neighborhood school concept has a long, hallowed or neutral history. Mobile never considered the neighborhood school concept a bar to its efforts to prevent the attendance of black and white students at the same schools. The extensive record and prolonged proceedings in this case show that the pairing of non-contiguous attendance zones, the transportation of students from one school zone to another, the closing

and conversion of schools, and the manipulation of grade structures—techniques proposed by HEW to completely dismantle Mobile's dual system by desegregating every school—were all established techniques of school administration when the objective was segregation.

This Court held in *Green* that school districts must consider proposed desegregation plans not in isolation and abstraction but in "light of any alternatives which may be shown as feasible and more promising in their effectiveness." 391 U.S. at 439. In Mobile, there is an alternative plan to test the effectiveness of that approved below.[17] The appropriate allocation of burdens requires the School Board to demonstrate its unworkability beyond question. That task has not been undertaken because the Court of Appeals saw fit to create, on its own, a new and absolute principle—

> Under the neighborhood assignment basis in a unitary system, the child must attend the nearest school whether it be a formerly white school or a formerly Negro school. *Ellis* v. *Board of Public Instruction of Orange County,* 423 F.2d 203, 207 (5th Cir. 1970)

—and then excuse the board from burdens it must carry under decisions of this Court. The fashioning by the Court of Appeals of the neighborhood school concept in absolute terms is as new a judicial invention as it is a principle of school administration in Mobile.[18] Invoking this concept

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[17] Where, as here, the alternative was formulated with the expertise of the United States Department of Health, Education and Welfare at the request of the district court, the "school districts are to bear the burden of demonstrating beyond question, after a hearing, the unworkability of the proposals. . . ." *Carter* v. *West Feliciana Parish School Bd.,* 396 U.S. 290, 292 (1970) (concurring opinion).

[18] See generally, Weinberg, Race and Place—A Legal History of the Neighborhood School (U.S. Gov't Printing Office, Catalogue No. FS 5.238:38005, 1967).

as an absolute bar to considering feasible alternatives in a process which requires the examination of individual circumstances of individual districts is plainly contrary to the decisions of this Court.

The absoluteness of the neighborhood school concept employed by the Court below cannot be overstated. Only the pupil assignment techniques of contiguous single-school zoning or contiguous pairing have been held permissible; any segregated school remaining after these two techniques have been exhausted is judicially sanctioned on the ground that it results solely from "neighborhood residential patterns." Yet the Court overlooks the vital role played by the school system itself in creating and defining the "neighborhoods" which are now held to be beyond the pale of school board corrective action. As Judge McMillan has said, referring to Charlotte, "Putting a school in a particular location is the active force which creates a temporary community of interest among those who at the moment have children in that school," *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 300 F. Supp. 1358, 1369 (W.D.N.C. 1969) (emphasis omitted). We have pointed out above that the record in this case vividly demonstrates the degree to which the Mobile school board has in the past been able to maintain *white* and *black school "neighborhoods"* through manipulation of attendance boundaries, grade structures, portable classroom placement and the pupil transportation system.

Like the minority-to-majority transfer disapproved in *Goss* v. *Board of Educ. of Knoxville, supra,* the "neighborhood school concept" permits private action which results in the maintenance of segregated schools. To begin with, there is a historic and pervasive pattern of housing segregation caused by discrimination against black people throughout the Nation. In the past, the policy of discrimi-

nation received the blessing of the federal government. *Racial Isolation in the Public Schools,* A Report of the U.S. Commission on Civil Rights 254 (1967). *See also,* Abrams, *Forbidden Neighbors* 233 (1955) and Weaver, *The Negro Ghetto* 71-73 (1948). In 1968, recognition of the problem led the United States to take affirmative steps to make housing available to minorities with the passage of the Fair Housing Act of 1968, 42 U.S.C.A. §§ 3601 et seq. (Supp. 1970); *see also, Jones* v. *Alfred H. Mayer & Co.,* 392 U.S. 409 (1969). But even if active housing discrimination were to cease, its residual effects persist. *See Racial Isolation in the Public Schools, supra,* at 201-02, Legal Appendix at 255-56.

Furthermore, the record in this case shows that the present residential patterns in Mobile result to a substantial degree from discriminatory policies of the federal, state and local governments. For example, there has been a close relationship between the school board and the public housing authorities in the Mobile area regarding location of racially identifiable housing projects and the concommitant nearby location of school facilities which have traditionally been, and which continue to be racially identifiable. *E.g.,* Pl. Int. Ex. 87 (July 1967 hearing).

Making pupil assignment merely reflective of housing patterns will therefore often but mirror community segregation and discrimination; it ignores the *affirmative* duty of school boards formerly operating dual systems to bring about integration. *Green* v. *County School Bd. of New Kent County, supra.*

The Court of Appeals for the Fourth Circuit has recognized the problem. In *Brewer* v. *School Bd. of City of Norfolk,* 397 F.2d 37, 41-42 (4th Cir. 1968), that Circuit held that

> Assignment of pupils to neighborhood schools is a sound concept, but it cannot be approved if residence in a neighborhood is denied to Negro pupils solely on the ground of color.

Other Courts have likewise measured the "neighborhood school concept" as a permissible desegregation device by examining the *alternatives* available and the results of its application.

The United States Court of Appeals for the Eighth Circuit recently considered the mandates of this Court in a challenge to Little Rock, Arkansas's continuing failure to desegregate its schools. At issue in this urban school system was the acceptability of a geographic zoning plan in light of several alternative plans involving the pairing of schools and transportation of students. The Eighth Circuit reviewed the results of Little Rock's geographic zoning plan against this statement of the law:

> Thus, as of this date it is not enough that a scheme for the correction of state sanctioned school segregation is non-discriminatory on its face and in theory. It must also prove effective. As the Court observed in *Green*:
>
> "In the context of the state imposed pattern of long standing, the fact that in 1965 the Board opened the doors of the former 'white' school to Negro children and of the 'Negro' school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to call for the dismantling of a well-entrenched dual system." 391 U.S. at 437.
>
> We believe that geographic attendance zones, just as the Arkansas pupil placement statutes, "freedom of choice" or any other means of pupil assignment must

> be tested by this same standard. In certain instances geographic zoning may be a satisfactory means of desegregation. In others it alone may be deficient. Always, however, it must be implemented so as to promote desegregation rather than to reinforce segregation [citations omitted]. *Clark* v. *Board of Education of the Little Rock School District,* No. 19,795 (8th Cir., May 13, 1970) (en banc) (Slip op., pp. 14-15).

Applying this test to the results of Little Rock's geographic zoning plan the Eighth Circuit found that the plan retained racially identifiable schools in the face of at least one alternative which would eliminate the racial identifiability at several such schools. The court held that the record could not sustain a holding that the geographical zoning plan "is the *only* 'feasible' means of assigning pupils to facilities in the Little Rock School System" (*Ibid.*) and while declining to decide on an absolute basis whether "geographical zoning or the neighborhood school concept are in and of themselves either constitutionally required or forbidden" the Court held "that as employed in the plan now before us they do not satisfy the constitutional obligations of the District" (*Id.* at 19-20).

The Eighth Circuit also declined to establish an absolute rule of transportation:

> Lastly, we do not rule that busing is either required or forbidden. As Judge Blackmun stated in *Kemp III,* "Busing is only one possible tool in the implementation of unitary schools. Busing may or may not be a useful factor in the required and forthcoming solution of the . . . problem which the District faces."

Kemp III, the El Dorado, Arkansas school case, focused on the *feasibility* of transportation as a technique of desegregation:

> It may or may not be feasible to use it [busing], in whole or in part, for Fairview-Watson-Murmil Heights and it may or may not be feasible to use it, in whole or in part, elsewhere in the system. Busing is not an untried or new device for this District. *Kemp* v. *Beasley*, No. 19,782 (8th Cir., March 17, 1970) (Slip op., p. 14).

Similarly in *Little Rock* the Court took occasion to note "that busing is not an alien practice" and had been used by the District "to preserve segregation" (Slip op. p. 20).

Following its 1968 decision in *Brewer, supra*, the United States Court of Appeals for the Fourth Circuit has refused to make the neighborhood school concept an inviolate principle in the way the Fifth Circuit believes it is. The Fourth Circuit, although observing that "[busing] is not a panacea," has held that "busing is a permissible tool for achieving integration...." *Swann* v. *Charlotte-Mecklenburg Board of Education*, No. 14,517 (4th Cir., May 26, 1970) (Slip op., p. 18). The court specifically condemned the School Board's rejection of a variety of legitimate techniques of desegregation.

> The district court properly disapproved the school board's elementary school proposal because it left about one-half of both the black and white elementary pupils in schools that were nearly completely segregated. . . . The consultants that the board employed were undoubtedly competent, but the board limited their choice of remedies by maintaining each school's grade structure. This, in effect, restricted the means of overcoming segregation to only geographical zoning, and as a further restriction the board insisted on contiguous zones. The board rejected such legitimate techniques as pairing, grouping, clustering, and satellite zoning (Slip op., pp. 22-23).

On remand, the Court held that "every method of desegregation, including rezoning with or without satellites, pairing, grouping, and school consolidation" should be explored, and that "undoubtedly some transportation will be necessary to supplement these techniques" (Slip op., p. 25). Nowhere is there any suggestion that the neighborhood school concept is an absolute bar to a plan entailing the transportation of students.[19] [20]

See also, Davis v. *School Dist. of City of Pontiac*, 309 F. Supp. 734 (E.D. Mich. 1970); *Spangler* v. *Pasadena City Bd. of Educ.*, Civ. No. 64-1438-R (C.D. Cal., March 12, 1970); *Crawford* v. *Board of Educ. of City of Los Angeles*, No. 822-854 (Super. Ct. Cal., February 11, 1970).

Ellis v. *Board of Public Instruction of Orange County, Florida, supra*, suggests that the objectives served by neighborhood schools are "to eliminate transportation costs and to permit the student to remain as near home as pos-

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[19] Petitioners wish to make clear that noting the conflict between the Fourth and Fifth Circuits does not in any way constitute an endorsement of the Fourth Circuit's limitation of remedial power by its "reasonableness" doctrine. See Petition for Writ of Certiorari, *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, No. 281, O.T. 1970, *cert. granted*, June 29, 1970, 38 U.S.L.W. 3522.

[20] In a concurring opinion in *Brewer* v. *School Bd. of City of Norfolk*, No. 14,544 (4th Cir., June 22, 1970), *cert. denied*, 38 U.S. L.W. 3522 (June 29, 1970), Judges Sobeloff and Winter wrote:

> The District Court should not tolerate any new scheme or "principle," however characterized, that is erected upon and has the effect of preserving the dual system. This applies to the "neighborhood school" concept, a shibboleth decisively rejected by this court in *Swann* (Judge Bryan dissenting), as an impediment to the performance of the duty to desegregate. The purely contiguous zoning plan advanced by the Board in that case was rejected by five of the six judges who participated. A new plan for Norfolk that is no more than an overlay of existing residential patterns likewise will not suffice. (Slip op. at pp. 1-2)

sible". *Ibid.* The absoluteness of the principle prevents any inquiry into the extent to which alternative assignment methods may in fact or law counteract these objectives.

If the saving of transportation costs is a legitimate objective then the actual impact of a plan on these costs must be appraised. Yet the Court of Appeals' formulation of the neighborhood school concept bars any determination of these increased costs, the school board's ability to bear them, and the availability of state assistance to defray a portion of the costs. Mobile is a school district which engages in extensive busing (during 1967-68 207 buses transported 22,094 students daily)[21] and by examining its past operation and present financial situation it would be possible to determine the actual impact of an order requiring the transportation of additional students. Furthermore, the court's formulation permits no consideration of the savings which transportation might enable in the system's school construction program. The School Board has been enjoined since 1969 from constructing two additional schools in Mobile's black ghetto. 414 F. 2d at 610. The use of presently unused capacity in white schools would eliminate the need to construct these facilities and the use of transportation to better utilize existing facilities might actually save the school system money. Finally, if the facts show that Mobile's transportation expenditures must actually increase beyond state assistance and savings in school construction costs, then the absoluteness of the court's neighborhood school concept forecloses judicial consideration whether the saving of money is a legitimate basis for maintaining racially separated schools.

The other objective which the neighborhood school concept is said to serve is allowing students to remain as close

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[21] The average round trip was 31 miles. (H.E.W. Report, July 10, 1969, p. 61).

to home as possible. Again the absoluteness of the neighborhood school concept prevents inquiry into the extent to which alternative assignment systems counteract this objective. The non-contiguous zoning plan proposed by the H.E.W. does *not* disperse students throughout the school system without relationships to any neighborhood schools. What the H.E.W. plan typically proposes to do is to require students and parents to relate to two neighborhoods, one black and one white, instead of to just one racial neighborhood. If parents living in proximity to one another wish to organize to act upon school problems they may still do so, except that they would hopefully work in concert with the parents of the paired zone to solve mutual problems. Yet no consideration may be given to these views given the absoluteness of the court's ruling below.

The Court of Appeals offers three alternatives to the desegregation of all schools: an integrated educational experience at some point in a child's educational career, a transfer policy allowing black students to transfer to white schools with transportation provided, and the establishment of a bi-racial committee to advise the School Board (16a). None of these alternatives provides a remedy for the constitutional wrong involved in maintaining racially segregated elementary schools.

Offering an integrated education in junior and senior high schools merely postpones the constitutional right to an integrated education and does not grant it "now". *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969). It also fails to consider the damage caused by five or six years of segregated elementary education and the difficulties black children will face in integrated junior and senior high schools after a segregated elementary education. The second alternative, transfers with transportation provided, unlawfully seeks to shift the burden from the School Board back to black children. Freedom of choice

by whatever name has never worked in Mobile. *Davis* v. *Board of School Commissioners of Mobile County*, 393 F.2d 690 and 414 F.2d 1211 (5th Cir. 1968-69). The third "alternative," a bi-racial advisory committee, while probably salutary is not an alternative in fact. It is just an *advisory* committee to an all-white and recalcitrant school board.

Finally the Court of Appeals offers the illusion that "open housing, Title VIII, Civil Rights Act of 1968 . . . [and] *Jones* v. *Mayer*, 392 U.S. 409 (1969) . . . will serve to prevent neighborhood entrapment" (16a). To the contrary, open housing, which is a difficult enough goal to achieve, will probably become even more difficult now that the Court of Appeals has provided an added inducement for whites to maintain neighborhood segregation. If, on the other hand, everyone realized that no matter where any one moved in the school system his children would attend an integrated school—and assuming that local interest in a neighborhood school system is strong—then the more the Mobile community integrated its neighborhoods the less it would have to transport students.

II.

This Court Should Grant Certiorari in Order to Insure Petitioners' Due Process Right to an Evidentiary Hearing in the District Court.

The instructions of the Court of Appeals to the district court on June 3, 1969, *Davis* v. *Board of School Comm'rs of Mobile County*, 414 F.2d 609 (5th Cir. 1969), provided for the submission of a new desegregation plan to replace freedom of choice in Mobile, and that

> 3 . . . (e) For plans as to which objections are made . . . the District Court *shall commence hearings* beginning no later than ten days after the time for filing objections has expired.

Id. at 611 (emphasis supplied). Despite this clear mandate, and petitioners' expressed objections to provisions of the plan filed by the Mobile school board, the district court acted August 1, 1969 without a hearing. Similarly, on remand from this Court (*sub nom. Carter* v. *West Feliciana Parish School Bd., supra, implemented sub nom. Singleton* v. *Jackson Municipal Separate School Dist.*, No. 26285 (5th Cir., Jan. 15, 1970)), the district court merely held a "pre-trial conference" and then entered an order on a permanent desegregation plan without affording an opportunity for an evidentiary hearing.

The absence of a record upon which to review the district court's judgment led the Court of Appeals to issue a limited remand for fact finding by the district court on specific issues vital to determining the propriety of the district court's action, such as the extensiveness of Mobile's pupil transportation system. Yet again, the district court denied petitioners' motion for a hearing and made its findings without petitioners' having been able to confront the board's version of the facts and introduce evidence contradicting it. Petitioner's appeal below raised the denial of an evidentiary hearing as one of the issues, but the Court of Appeals, which also acted summarily,[22] ignored it.

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[22] The last regularly scheduled oral argument in a school desegregation case in the Fifth Circuit was held last summer, except for one argument held March 18, 1970 in *Bradley* v. *Board of Public Instruction of Pinellas County, supra.* Ten cases were removed from the regular calendar and argued together *en banc* November 15-16, 1969. *Singleton* v. *Jackson Municipal Separate School Dist., supra, rev'd sub nom. Carter* v. *West Feliciana Parish School Bd., supra.* Since that time, more than twenty decisions in such cases have been issued, all—with the exception of *Bradley*—without the benefit of oral argument. In addition, since *Singleton*, all school desegregation appeals have been subject to its vastly accelerated time schedule, see 419 F.2d at 1222, which often requires briefing and decision without benefit of a transcript. In light of the accelerated and summary procedures of the Court of Appeals, the district court's refusal to hold a hearing assumes even greater significance.

Petitioners submit that this consistent refusal to permit them to present their case is contrary to the most fundamental notions of due process. Particularly in our adversary system, courts rely upon the vigorous presentations of counsel to sharpen issues, focus litigation, and bring out the facts. Yet neither the district court, which selected and modified a plan, nor the Court of Appeals, which selected and modified a different plan, has heard counsel in this case.

The plans do, in a limited sense, speak for themselves. Assuming *arguendo* that the district court might have selected a plan to be implemented *pendente lite* without a hearing, (and we submit that under the principles of *Alexander* and *Carter*, this Court should require the implementation of Plan B-1 Alternative *pendente lite*) the final disposition of a case of this magnitude affecting tens of thousands of students should not be attempted without full exploration of the facts. If the district court was under the impression that it had an obligation to *finally* dispose of the case by February 1, 1970 at the cost of a full exploration of the facts at a hearing, then the court misread *Carter* and *Alexander*.

Only after a full hearing at which all parties have the opportunity to present their evidence should the district court rule on a permanent plan and in so doing, make detailed findings of fact. The findings of the district court in its January 31, 1970 order hardly acquit the court's obligation. The selection of isolated facts from a comprehensive plan to desegregate a large school district provides plainly inadequate support for whatever ultimate conclusion the court may reach. Finally, if the court by an appropriate standard does find isolated problems with a comprehensive plan it should require amendments rather than reject the plan in its entirety.

Merely remanding to the district court for an evidentiary hearing will serve no purpose, however, unless this Court also makes clear that in devising a remedy for the state-imposed dual school system in Mobile, neither the school board nor the district court is in any way limited by the "neighborhood school concept" expounded by the Court of Appeals. And, pending such hearing and the district court's determination, this Court should require Mobile to implement Plan B-1 Alternative *pendente lite*. *Cf. Swann* v. *Charlotte-Mecklenburg Bd. of Educ., supra* note 19.

CONCLUSION

For the foregoing reasons it is submitted that the petition for certiorari should be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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Order of District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

CIVIL ACTION NO. 3003-63

BIRDIE MAE DAVIS, ET AL.,

Plaintiff,

and

UNITED STATES OF AMERICA, by RAMSEY CLARK, Attorney General, etc.,

Plaintiff-Intervenor,

vs.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.,

Defendants,

and

TWILA FRAZIER, ET AL.,

Intervenors.

This Court entered a decree in this case on August 1, 1969, under which the public school system of Mobile County opened and operated through the first semester of 1969. That part of the desegregation plan devised in said order which was to be implemented in September 1970, was in accord with recommendations of Health, Education and

Welfare, with alterations or modifications to meet particular educational principles. This Court's decision was appealed and was affirmed by the Fifth Circuit Court of Appeals sitting en banc on December 1, 1969.

On January 14, 1970, the Supreme Court of the United States reversed the Fifth Circuit Court of Appeals and remanded the decision to the Court of Appeals for further proceedings consistent with the Supreme Court's opinion. On January 21, 1970, the Court of Appeals issued its mandate to this Court, which in effect stated that there could be no deferral of school desegregation beyond February 1, 1970.

Faced with this mammoth task, the Court on its own motion sought the advice and professional assistance of all the parties. On the afternoon of January 23, 1970, the Court conducted a pretrial conference with the attorneys representing all of the parties and at such time the Court requested attorneys for the school board and the government to submit a revision of the plans submitted by the school board on December 1, 1969. The Court realizing its plan of August 1, 1969, in some respects was still a dual system, ordered the school board to submit a plan not later than December 1, 1969, which would disestablish such system, which plan was to be implemented on September 1, 1970. The Court also called upon the government for revision of the HEW plan which the government thought should be followed for the remainder of the present school year. These revised plans were to be furnished to the Court by 9 o'clock A.M. on the 27th day of January. The government furnished the requested plans. The school board did not, and by order dated January 28, 1970, at 9:30 A.M., the school board was ordered to submit such revised plans. As of this date, they have not done so. The school

board and its staff of administrators and professional educators, who know the Mobile Public School System best, who have all the facts and figures which are absolutely necessary for a meaningful plan, have not assisted or aided the Court voluntarily. Consequently, the plan which is by this decree being ordered is not perfect, but the ten day period from January 21st to February 1st obviously allows inadequate time to work out an ideally legal and workable plan for educating approximately 75,000 school children, particularly when the change comes in mid-semester. This plan pleases no one—the parents and students, the school board, Justice Department, NAACP, nor in fact, this Court. The Court's plan closes schools which the school board wants open. It opens schools which the Justice Department wants closed. But a decision had to be made and it was the duty and the responsibility of this Court to make that decision. The Supreme Court of this country has spoken, and this Court is bound by its mandate. It is the law. It must be followed.

The revised HEW plan which the government submitted to the Court would require no busing of students, but extensive pairing of several schools. An alternate plan submitted by HEW and upon which the plaintiffs insist, would require the busing of children from areas of the city to a different and unfamiliar area as well as the pairing of many schools. The distance between some of the schools by vehicular traffic would be approximately fifteen miles. The government plan and the HEW plan would materially change the grade structure for approximately thirty-four schools, and in some instances, would completely change each school's identity. The government asked the Court to close many of the high schools which are attended by 90% or more of Negro pupils, among them, Central High

and Mobile Training. This I am unwilling to do as I think it would be unfair to the Negro population of this city. Many of them have graduated from one or more of these schools. They take pride in them. In many areas, including sports, there is much rivalry between these schools and I do not think the traditions which they have created over the years should be destroyed.

Under one of the HEW plans it would have necessitated a child in the Austin area to attend Austin in the fifth grade and from the sixth through ninth grades he would have to change three times, namely, to Phillips, Washington and Toulminville, and in the tenth grade to Murphy, thus attending five different schools in six years. Under one of the HEW plans of pairing schools, a child would have gone to Dodge in the first and second grades, Williams in the third grade, and Owens in the fourth, fifth and sixth grades. The distance from Dodge to Williams is approximately 8.6 miles and from Williams to Owens approximately 7.4 miles and from Dodge to Owens, approximately 11.4 miles.

Admittedly these material changes in grade structures and in identity, and the pairing of schools and the necessity of busing great distances, are motivated for the sole purpose of achieving racial balance. In this Court's opinion, the Supreme Court has not held that such drastic techniques are mandatory for the sole purpose of achieving racial balance. By the same token, the Court is of the opinion that such techniques in certain instances, must be utilized to remove the effect of the dual school system. Therefore, it was necessary to change the grade structure on a limited basis and in one instance, the identity of a school. These alterations were not motivated to achieve racial balance, but to desegregate the public school system.

I have said many times that the best thing that could happen would be for this litigation to come to an end. This is true. But I am unwilling to disregard all common sense and all thoughts of sound education, simply to achieve racial balance in all schools. I do not believe the law requires it. And this litigation will continue to be stirred as long as adequate funds are provided for those who want litigation, for the sake of litigation, without regard to the rights of the children and parents involved.

The Court has attempted as nearly as possible to comply with the mandate of the Appellate Courts and yet leave it humanly and educationally possible to operate the schools. Laboring under the handicap of time, the Court has accomplished what it finds to be the plan most workable under the circumstances, both from an educational and implemental point of view.

Therefore, it is ORDERED, ADJUDGED and DECREED by the Court that the area attendance desegregation plan submitted by the school board on December 1, 1969, for those school zones lying East of I-65, with one exception set out below, is hereby adopted and put into effect as of February 1, 1970, with the following exceptions:

Elementary Schools East of I-65

1. The Emerson Elementary School serving Grades 1-6 shall be closed. Those students who attend Emerson will now attend Council or Leinkauf Elementary Schools, as illustraetd by the map attached hereto and identified as Exhibit "A". Those sixth grade students now attending Emerson shall be enrolled at Hall Junior High School. The placement of the Emerson students in other area attendance zones are reflected by modification of the Council-Leinkauf area attendance zones.

Middle Schools East of I-65

2. The Hall area attendance zone shall be increased to relieve the overcrowding situation at Dunbar Junior High and to include those sixth grade students who previously attended Emerson or Old Shell Road. The area attendance zones for Washington Junior High, Phillips Junior High, Mae Eanes Junior High, and Dunbar Junior High, have all been altered to achieve a desegregated school system, as reflected by area attendance zone map attached hereto and identified as Exhibit "B".

High Schools East of I-65

3. Trinity Gardens School is hereby changed to a middle school serving Grades 6-8. The high school students who previously attended Trinity Gardens shall attend Blount High School.

Murphy High School area attendance zone has been increased to achieve desegregated school system and to eliminat the overcrowded enrollment at Toulminville High School, as reflected by area attendance zone map attached hereto and identified as Exhibit "C".

It is FURTHER ORDERED, ADJUDGED and DECREED by the Court that those graduating high school seniors who are not presently attending the high school which serves their area under the Court's plan submitted this date, shall be allowed to remain in the high school which they presently attend for the remainder of the 1969-70 school year.

However, since the identity of the Trinity Gardens school has been changed from a high school to a school serving the middle grades, the seniors at Trinity Gardens shall now be attending Blount High School. Under the circumstances, the Court authorizes the Board, faculty, and the students themselves, in instituting this plan, to maintain the identity

of the Trinity Gardens seniors as a unit by whatever proper programs they deem necessary at Blount High School.

Schools Lying West of I-65

4. The Davidson High School attendance area is hereby enlarged to include those students who previously attended Murphy High School under the area attendance zone lying West of I-65 as illustrated by Exhibit "C" attached hereto.

It is FURTHER ORDERED, ADJUDGED and DECREED that the area attendance zones lying West of I-65 as decreed by this Court on August 1, 1969, with the one exception above noted, shall remain in effect.

Paragraph VII of the Court's order of August 1, 1969, pertaining to faculty is incorporated in its entirety in this order and should be implemented forthwith.

The Board shall publish or cause to have published in the local newspaper, the complete text of this decree and the maps attached, not later than Wednesday, February 4, 1970. In addition, the school board shall post or cause to be posted, in a conspicuous place in each school in the system in which this decree changes area attendance zones from that established in the August 1, 1969, decree, and at the offices of the school board.

The Court finds that this decree disestablishes the operation of a dual school system in Mobile County and establishes a unitary system.

This plan shall be implemented forthwith.

DONE at Mobile, Alabama, this the 31st day of January 1970.

/s/ DANIEL H. THOMAS
United States District Judge

Opinion of Court of Appeals

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29332
Summary

BIRDIE MAE DAVIS, ET AL.,
Plaintiffs-Appellants-Cross Appellees,

and

UNITED STATES OF AMERICA, ETC.,
Plaintiff-Intervenor-Appellants-Cross Appellees,

versus

BOARD OF SCHOOL COMMISSIONERS OF
MOBILE COUNTY, ET AL.,
Defendants-Appellees-Cross Appellants,

and

TWILA FRAZIER, ET AL.,
Intervenors-Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

(June 8, 1970)

Before BELL, AINSWORTH, and GODBOLD, Circuit Judges.

Opinion of Court of Appeals

BELL, Circuit Judge: We consider again the effort to convert the Mobile County School System from dual to unitary status. This is the ninth appeal of the matter to this court.[1] The system is now operating on a student assignment system fashioned by the district court after considering a school board plan of assignment, three separate HEW plans, and one plan submitted by the Department of Justice.

In *Singleton* v. *Jackson Municipal Separate School District,* supra, fn. (1), we approved the student assignment plan of the Mobile County system then in effect for all schools located west of Interstate Highway 65. This appeal basically complains only of the student assignments in the schools located east of I-65. However, in an effort finally to adjudicate the status of this system from the standpoint of all of the essentials required to convert a dual school system into a unitary school system, we have obtained supplemental findings of fact from the district court. See *Ellis* v. *The Board of Public Instruction of Orange County, Florida,* 5 Cir., 1970, —— F.2d —— [No. 29,124, slip opinion dated February 17, 1970]; *Mannings* v. *The Board of Public Instruction of Hillsborough County, Florida,* 5 Cir., —— F.2d —— [No. 28,643, slip opinion dated May —, 1970], as examples of the same approach.

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[1] *Singleton* v. *Jackson Municipal Separate School District,* 5 Cir., 1969, 419 F.2d 1211 (en banc consideration of Mobile case and 12 additional school desegregation cases); *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1969, 414 F.2d 609; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1968, 393 F.2d 690; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1966, 364 F.2d 896; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1964, 333 F.2d 53; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1963, 322 F.2d 356; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1963, 318 F.2d 63; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1970, 422 F.2d 1139.

In *Ellis* v. *Orange County* and in *Mannings* v. *Hillsborough County*, we adverted to the school desegregation requirements set out in *Alexander* v. *Holmes County Board of Education*, 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.E.2d 19; *Green* v. *County School Board of New Kent County*, 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716, and the decision of this court in *Singleton* v. *Jackson Municipal Separate School District*, supra. In *Ellis* v. *Orange County*, we said:

> "... In *Green* v. *County School Board of New Kent County*, ... the mechanics of what must be done to bring about a unitary system were outlined. They were stated in terms of eliminating the racial identification of the schools in a dual system in six particulars: composition of student bodies, faculty, staff, transportation, extracurricular activities, and facilities.... It was such dual systems, organized and operated by the states acting through local school boards and school officials, which were held unconstitutional in *Brown* v. *Board of Education*, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (Brown I), and which were ordered abolished in *Brown* v. *Board of Education*, 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (Brown II).
>
> "In *Green* the court spoke in terms of the whole system—of converting to a unitary, nonracial school system from a dual system. Then, in *Alexander* v. *Holmes County Board of Education*, ... the court pointed to the end to be achieved. The result, if a constitutionally acceptable system may be said to exist, must be that the school system no longer operates as a dual system based on race or color but as a 'unitary school ... [system] within which no person is to be

effectively excluded from any school because of race or color.' . . ." —— F.2d at p. ——.

We thus proceed to a determination of the status of the Mobile system with respect to each of the six essential elements which go to disestablish a dual school system.[2] We find the system deficient in student assignment in certain schools and also in faculty and staff assignment.

The Mobile system covers the whole of Mobile County including the City of Mobile. The county is quite large in area, embracing 1,222 square miles. There are a total of 96 schools in the system in 91 buildings, and the 96 schools consist of senior high, junior high, and elementary schools plus one special school. Some of the buildings house separate elementary or junior high or high schools; others house combinations of these. There were 73,504 students in the system as of September 26, 1969. This total breaks down into 42,620 or 58 percent white students, 30,884 or 42 per cent Negro students. Under the present plan 18,623 or 60 per cent of the Negro students in the system are assigned to schools having all or virtually all Negro student bodies. These Negro students are housed in 12 elementary, 3 junior high schools, 1 combination junior-senior high, and 3 senior high schools.

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[2] Under the stringent requirements of *Alexander* v. *Holmes County Board of Education*, supra, which this court has carried out in *United States* v. *Hinds County School Board*, 5 Cir., 1969, 417 F.2d 852 [Nos. 28030, 28042, Nov. 7, 1969], this court has judicially determined that the ordinary procedures for appellate review in school segregation cases have to be suitably adapted to assure that each system, whose case is before us, "begin immediately to operate as unitary school systems." Upon consideration of the record, the court has proceeded to dispose of this case as an extraordinary matter. Rule 2, FRAP.

FACULTY AND STAFF

The faculty and staff desegregation standard enunciated in *Singleton* v. *Jackson*, supra, requires assignment on a basis whereunder the ratio of Negro to white teachers and staff members in each school is substantially the same as each such ratio is to teachers and staff in the entire school system. The faculty ratio for the system is approximately 60 per cent white and 40 per cent Negro. As of April 7, 1970, there were 1,642 white faculty members and 1,098 Negro members or a total of 2,740. We have no information on staff ratios.

The Mobile County school system has almost totally failed to comply with the faculty ratio requirement although ordered to do so by the district court on August 1, 1969. Only a few schools approach the 60-40 faculty ratio. The district court is directed to require strict compliance with the *Singleton* v. *Jackson* rule for faculty and staff on or before July 1, 1970.

TRANSPORTATION, FACILITIES AND EXTRACURRICULAR ACTIVITIES

In the 1967-68 school term, 207 school buses transported 22,094 students daily. The facts disclose that school buses are used in all rural areas of the county and in the outlying areas of metropolitan Mobile and that they are operated on a non-segregated, non-discriminatory basis. The facts also demonstrate that all extracurricular activities and facilities are operated on the same basis. Indeed, there is no complaint regarding transportation, facilities and extracurricular activities. The district court is directed to enter an order requiring the continued desegregation of facilities and extracurricular activities and to include the requirements of *Singleton* v. *Jackson*, supra, as to trans-

portation, school construction and school site selection as a part of the order.

STUDENT ASSIGNMENT

We have examined each of the plans presented to the district court in an effort to determine which would go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept of the school system. Unlike Orange County (*Ellis* v. *Orange County*, supra), Mobile does not purport to use the strict neighborhood assignment system. It employs zones based on discretionary zone lines. In that sense it is like the Hillsborough County system (*Mannings* v. *Hillsborough County*, supra), and the situation, as in Hillsborough, can be greatly improved by pairing some schools located in close proximity to each other. See the description of neighborhood pairing used in *Mannings* v. *Hillsborough County*. The situation can also be improved by recasting the grade structure in some of the buildings but, at the same time, maintaining the neighborhood school concept.

The plan submitted by the Department of Justice on January 27, 1970, contemplates both pairing and the recasting of grades. It produces a result of 9 all or virtually all Negro student body elementary schools instead of 12 as at present, and 1 senior high school of the same type instead of 7 junior and senior high schools as at present. Instead of 60 per cent of the Negro students being assigned to such schools, the result under the Department of Justice plan would be 28 per cent (8,515 students instead of 18,623). Every Negro child would attend an integrated school at some time during his education career under the Department of Justice plan.

The result to be achieved under this plan proves an obvious fact. Ordinarily, it is easier to desegregate high and junior high schools than elementary schools. This is due to the difference in the size of the schools. Elementary schools are generally smaller and thus they receive students from a more restricted area. On the other hand, high and junior high schools, with their large student capacities, encompass larger areas and, more likely, areas containing diverse racial groups.

We conclude that the Department of Justice plan, as hereinafter modified, must be invoked. By way of modification, it will be necessary to desegregate the one all Negro high school—Toulminville. It appears from maps of record that the zone line between Murphy high and Toulminville high can be redrawn so as to include some of the students living in the area of the Crichton elementary school. Some of these students appear to reside nearer Toulminville than Murphy. In addition, the Department of Justice plan must be modified to close the Emerson elementary school (soon to be eliminated in an urban renewal project). This school would have an all Negro student body under the Justice Department plan. The 450 students who would be assigned to Emerson are to be assigned as follows: 200 to Council, 200 to Caldwell, and 50 to Lienkauf.

This will leave only 8 all Negro student body schools (all elementary), with 25 per cent of the Negro students assigned thereto (7,725 instead of 18,623), and every Negro child in the Mobile system will attend school in a desegregated junior high and high school on a neighborhood basis.[3]

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[3] The Department of Justice plan coupled with the Toulminville and Emerson feature seems superior to the HEW plans. Any one of the plans, HEW or Department of Justice as modified, would lead to a unitary system. The original HEW plan (Plan B), filed

Attached as Appendix A is a chart depicting student body composition by school and race under the present district court plan and the Department of Justice plan of January 27, 1970.[4] The district court is directed to implement the Department of Justice plan on or before July 1, 1970 together with the Toulminville-Murphy and Emerson changes above described.

From the standpoint of demography, a majority of the Negro population in the Mobile school system is situated in a concentrated area within the City of Mobile to the east of Highway I-65. The all Negro student body schools which will be left after the implementation of the Department of

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on July 10, 1969, principally utilized zoning, but also proposed transporting approximately 2,000 Negro students from the heavy Negro concentration in eastern Mobile to predominantly white schools in the western and southern part of Mobile. It did not contemplate transporting white students in exchange. This plan would retain 6 all Negro schools serving 5,949 Negro students, or 19 per cent of the total Negro students in the system. HEW Plan B-alternative, filed December 1, 1969, employed contiguous zoning as well as contiguous pairing. The plan contemplated no transportation of students. It would leave 9 all Negro schools serving 7,971 students, or 26 per cent of the total. HEW Plan B-1-alternative, filed December 1, 1969, was limited to elementary schools and incorporated Plan B-alternative for junior and senior high schools. The plan involves non-contiguous pairing of each all Negro school in eastern Mobile with a predominantly white school in western or southern Mobile (across the system). The plan calls for cross-transportation of both whites and Negroes. There would be no all Negro schools under this plan. This non-neighborhood plan is euphemistically referred to in plaintiff's brief as a "Shared Neighborhood Plan."

[4] The defendants warn that the figures used by the Department of Justice and HEW are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district. Such errors in information as do exist may be corrected and the situation adjusted accordingly by the district court.

Justice plan as modified, are the result of neighborhood patterns. This condition can be further alleviated through a majority to minority transfer policy and through the functioning of a bi-racial committee. The student assignments in the school system depend on zone lines which are drawn on a discretionary basis and therefore may be subject, in some instances, to abuse and in others, to improvement. The proper administration of zone lines depends upon good faith in establishing and maintaining the lines as well as continuing supervision over them.

The district court is directed to see that a bi-racial committee of the type described in *Ellis* v. *Orange County*, supra, is established. See *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1970, —— F.2d —— [No. 29226, slip opinion dated May, 1970]. In addition, the district court is directed to require the majority to minority transfer rule of *Ellis* v. *Orange County*. All transferring students must be given transportation if they desire it and the transferee is to be given priority for space.

The district judge is also directed to require that the bi-racial committee serve in an advisory capacity to the school board in the areas of the operation of the majority to minority transfer rule, the promulgation and maintenance of zone lines, and in school site location. As we said in *Ellis* v. *Orange County*, with respect to eliminating all Negro student body schools:

> ". . . The majority to minority transfer provision under the leadership of the bi-racial committee is a tool to alleviate these conditions now. Site location, also under the guidance of the bi-racial committee, will guarantee elimination in the future. In addition, open housing, Title VIII, Civil Rights Act of 1968, 42 USCA, § 3601, et seq., *Jones* v. *Mayer*, 1968, 392 U.S. 409, 88

S.Ct. 2186, 20 L.Ed.2d 1189, will serve to prevent neighborhood entrapment."

DEFICIENCIES TO BE REMEDIED

We conclude that three of the six elements that go to make up a unitary system have been accomplished in Mobile County: transportation, extracurricular activities, and facilities. The remaining deficiencies in faculty and staff desegregation and in student assignment must be remedied on or before July 1, 1970 on the basis heretofore stated. All other diretion herein given to the district court must also be accomplished not later than July 1, 1970.

Once done, and when the district court, by the standards herein stated, has made its own conclusion as to the system being unitary, the district court must retain jurisdiction for a reasonable time to insure that the system is operated in a constitutional manner. As the Supreme Court said in *Green*, "... whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed." 391 U.S. at 439.

REVERSED and REMANDED with direction.

APPENDIX "A"

COMPARISON OF DEPARTMENT OF JUSTICE PLAN WITH DISTRICT COURT PLAN

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*		
ELEMENTARY SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
South Brookley	1-6	502	71	1-6	484	76
Morningside	1-5	631	0	1-5	751	0
Williams	1-6	571	43	1-6	554	60
Maryvale	1-5	414	117	1-5	453	171
Mertz	1-5	498	104	1-5	453	0
Craighead	1-5	347	489	1-5	290	569
Arlington	1-5	160	170		- closed -	
Council	1-5	4	391	1-5	2	548
*Emerson	1-5	0	450		- closed -	
Lienkauf	1-5	273	165	1-5	224	235
Woodcock	1-5	424	167	1-5	193	186

		Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*	
ELEMENTARY SCHOOLS — cont.						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Westlawn	1-5	532	0	1-6	541	0
Crichton	1-5	438	348	1-6	457	240
Old Shell Road	1-5	232	295	1-6	267	106
Caldwell	1-5	0	350	1-6	20	390
Howard		- closed -		1-6	12	432
Owens	1-5	2	1414	1-6	0	1121
Fonvielle	1-5	0	1000	1-6	4	1163
Stanton Road	1-5	6	900	1-6	6	976
Gorgas	1-5	7	963	1-6	4	1168
Brazier	1-5	10	1022	1-5	0	955
Grant	1-5	15	1285	1-5	0	1231
Palmer/Glendale	1-5	434	931	1-5	66	600
Glendale/Palmer	1-5	434	931	1-5	385	192
Whitley	1-5	216	481	1-5	0	383
Robbins/Hamilton	1-5	638	855	1-5	0	859

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			Assignments Under District Court Plan of 1/31/70		
ELEMENTARY SCHOOLS — cont.						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Hamilton/Robbins	1-5	638	855	1-6	62[illegible]	0
Chickasaw	1-5	473	100	1-6		3
WEST OF I-65						
Whistler	1-5	181	205	1-6	[illegible]27	231
Thomas	1-5	180	95	1-6	[illegible]22	101
Indian Springs	1-5	535	11	1-6	520	12
Eight Mile	1-6	280	66	1-8	586	110
Shepard	1-6	409	29	1-6	409	29
Dodge	1-6	675	65	1-6	675	65
Austin	1-6	396	22	1-6	396	22
Fonde	1-6	679	11	1-6	679	11
Dickson	1-6	835	193	1-6	835	193
Orchard	1-5	754	113	1-5	754	113
Will	1-5	657	175	1-5	657	175
Forest Hill	1-5	560	0	1-5	560	0

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			Assignments Under District Court Plan of 1/31/70		
MIDDLE SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Rain	7-12	1150	97	7-12	1089	112
Eanes/Hall	6-9	1292	977	6-8	978	280
Hall/Eanes	6-9	1292	977	6-8	180	838
Phillips/Washington	6-9	1170	1716	7-8	691	179
Washington/Phillips	6-9	1170	1716	7-9	0	1463
Dunbar	6-9	181	985	7-8	5	738
Central	6-9	468	1206	9-12	0	1233
Mobile Co. Training	6-7	432	859	6-12	57	1125
Prichard	6-7	240	410	6-8	299	201
Trinity Gardens	6-7	380	690	6-8	0	996
Clark	8	536	948	7-9	1080	290
WEST OF I-65						
Azalea Road	7-8	1039	38	7-8	1039	38
Scarbrough	6-8	638	77	6-8	638	77
Hillsdale	6-8	431	217	6-8	431	217

HIGH SCHOOLS SCHOOL ..	*Projected Enrollment Under Zones Lines Offered by the U. S. on 1/27/70* GRADES	WHITE	NEGRO	*Assignments Under District Court Plan of 1/31/70* GRADES	WHITE	NEGRO
Rain	7-12	1150	97	7-12	1089	112
Williamson	10-12	880	471	9-12	472	383
Murphy	10-12	1643	1761	9-12	2340	513
**Toulminville	10-12	9	740	10-12	0	1125
Blount/Carver	9-12	854	1846	9-12	8	1818
Carver/Blount	9-12	854	1546	6-8	1	899
Vigor/Bienville	9-12	1134	1211	9-12	1447	439
Bienville/Vigor	9-12	1134	1211	1-6	288	313
WEST OF I-65						
Davidson	9-12	2302	72	9-12	2296	72
Shaw	9-12	1250	240	9-12	1242	237

* An optional provision of the Department of Justice plan called for closing all Negro Emerson elementary school and assigning its 450 students to six non-contiguous schools: Maryvale, Woodcock, Westlawn, Fonde, Morningside, and Lienkauf. This option is eliminated. As modified by the court, the stu-

Judgment of United States Court of Appeals

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1969

No. 29332

D. C. DOCKET No. CA 3003-63

BIRDIE MAE DAVIS, *et al*,

Plaintiffs-Appellants-Cross Appellees,

and

UNITED STATES OF AMERICA, *etc.*,

Plaintiff-Intervenor-Appellants-Cross Appellees,

versus

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al*,

Defendants-Appellees-Cross Appellants,

and

TWILA FRAZIER, *et al*,

Intervenors-Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

BEFORE:

BELL, AINSWORTH and GODBOLD,

Circuit Judges.

Judgment of United States Court of Appeals

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was taken under submission by the Court upon the record and briefs on file;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded with direction to the said District Court in accordance with the opinion of this Court.

It is further ordered that defendants-appellees-cross appellants and intervenor-appellees pay the costs on appeal to be taxed by the Clerk of this Court.

June 8, 1970

Issued as Mandate: Jun 8 1970

Orders of Court of Appeals on Rehearing

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 29332

BIRDIE MAE DAVIS, ET AL.,

Plaintiffs-Appelants-Cross Appellees,

UNITED STATES OF AMERICA, ETC.,

Plaintiff-Intervenor-Appellants-Cross Appellees,

versus

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.,

Defendants-Appellees-Cross Appellants,

and

TWILA FRAZIER, ET AL.,

Intervenors-Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

BEFORE:

BELL, AINSWORTH, and GODBOLD,

Circuit Judges.

IT IS ORDERED that appellees' motion for leave to file petition for rehearing out of time and leave to file petition for rehearing in excess of 10 pages but not to exceed 20 pages is hereby GRANTED.

Orders of Court of Appeals Denying Rehearing

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 29,332

BIRDIE MAE DAVIS, ET AL.,

Appellants-Cross Appellees,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.,

Appellees-Cross Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

(June 29, 1970)
(On Petition for Rehearing)

BEFORE:

BELL, AINSWORTH, and GODBOLD,

Circuit Judges.

BY THE COURT:—

It is ORDERED that the petition for rehearing filed in the above entitled and numbered cause be, and the same is hereby DENIED.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 436

BIRDIE MAE DAVIS, et al.,
Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

"For almost a decade there have been judicial efforts to desegregate the schools of Mobile County, Alabama. We wonder when the epilogue will be written." . . . (Judge Goldberg, Opinion in Fifth Circuit number 27849, a collateral proceeding to the primary desegregation case.)

"I have said many times that the best thing that could happen would be for this litigation to come to an end. This is true. But I am unwilling to disregard all common sense and all thoughts of sound education, simply to achieve racial balance in all schools. I do not believe the

law requires it. And this litigation will continue to be stirred as long as adequate funds are provided for those who want litigation for the sake of litigation, without regard to the rights of the children and parents involved. The Court has attempted as nearly as possible to comply with the mandate of the Appellate Courts and yet leave it humanly and educationally possible to operate the schools." . . . (Judge Daniel H. Thomas' opinion attached as part of the January 31, 1970, District Court decree in this case.)

OPINIONS BELOW

The Petition seeks a writ of certiorari to review an opinion and judgment of the Court of Appeals entered on June 8, 1970. Since the petition was filed, the following has occurred:

(a) The District Court has entered orders dated June 12, 1970 and July 13, 1970 and July 30, 1970 modifying substantially the provisions of the desegregation plan set out by the Court of Appeals in its judgment of June 8, 1970.

(b) The June 12, 1970 and July 13, 1970 Orders of the District Court have been appealed by Petitioner to the Court of Appeals.

(c) The Court of Appeals, upon the motion of Petitioner seeking various orders and preliminary injunctive relief pending appeal, has recalled and amended the mandate of its June 8, 1970 judgment and has entered a supplemental opinion and amended mandate and order dated August 4, 1970.

(d) In the August 4, 1970 opinion and order the Court of Appeals states that the June 8, 1970 opinion and order and the August 4, 1970 opinion and order, together, shall be considered the final order on the appeal for mandate and certiorari purposes.

Therefore, the statement of the opinions below, should be expanded to include the following:

(1) The Order of the District Court dated June 12, 1970, unreported.

(2) The Order of the District Court dated July 13, 1970, unreported.

(3) The Order of the District Court dated July 30, 1970, unreported.

(4) The Opinion and Order of the Court of Appeals dated August 4, 1970, not yet reported (pages 5a through 17a).

QUESTION PRESENTED

Although we do not feel that such review is desirable, necessary or warranted, the School Board voices no strong objection to a review of this case by the Supreme Court upon writ of certiorari.

We do, however, most strongly urge that there is nothing to require or justify the summary imposition of a still further and different plan of student assignment, pendente lite, whether it be the so-called Plan B-I Alternative suggested by Petitioner, or any other.

The essential question presented to this Court, then, is whether, under the immediate facts present in this case, this school system should now be subjected to another complete reorganization; by the adoption by this Court of another desegregation plan (Plan B-I Alternative) that has been rejected by the District Court and the Court of Appeals as educationally unsound and functionally impossible of implementation, and comes to this Court completely unsupported by testimony in any form; in place of the present desegregation plan which was devised by the United States Department of Justice and the Office of Education of the Department of Health, Education and Welfare, and approved and adopted by the Fifth Circuit Court of Appeals.

STATEMENT

I. General Introductory Information

The Mobile County Public School System is the largest school system in the State of Alabama, with a normal annual enrollment of approximately 80,000 students. The school system is administered by a board of five commissioners elected from the county at large by popular vote in county wide elections. They serve without compensation. The board in turn employs professional administrative personnel, including a superintendent of schools who has a Ph.D. Degree from Columbia University. The system is a combined city-county system encompassing the entire county, which is largely rural, and every city and municipality in the county, the largest of which is the City of Mobile with a population of some 235,000 persons. Thus the School Board must deal with the whole spectrum of problems and difficulties inherent in the desegregation process, from those peculiar to small rural schools and systems, to those associated with affluent suburban schools and systems, to those peculiar to large, compact metropolitan or urban systems.

During the immediate past school year the School Board operated 89 schools and employed 2605 teachers; fifty nine per cent (59%) of these teachers were white and forty one per cent (41%) negro. Student enrollment in the system is normally about sixty per cent (60%) white and forty percent (40%) negro.[1]

[1] The ratio was somewhat different during the 1969-70 school year owing to the disappearance of approximately 6500 white students from the system, apparently as a result of their dissatisfaction with the school board's implementation of the desegregation plans devised by the District Court and promulgated in its August 1, 1969 and January 31, 1970 Decrees.

II. Statement of the Facts

This case has been in litigation since 1963. At that time the school system was, in both a legal and a practical sense, a dual system, with negroes attending one set of schools and whites attending another. There was no student integration, no faculty integration and no integration of services, facilities, activities and programs. This once dual system has now been completely disestablished, and there now exists a unitary school system within which no person is effectively excluded from any school because of race or color; as per **Alexander v. Holmes County Board of Education,** 396 U. S. 19 (1969). The system is unitary in every respect of its operation.

In recent decisions the Courts have set out the various elements that must be taken into account in determining if a school system has been converted from a dual system to a unitary, nonracial system—faculty and staff; transportation; extra curricular activities, including sports; facilities; school construction, consolidation and site selection; transfer policy; and student body composition.[2] The Petition for Writ of Certiorari directly concerns only student body composition. Nevertheless, since this is only one element of the total desegregation process, it is desirable that some attention also be directed toward an examination of the other elements of the conversion from dual to unitary school system, as they exist in the Mobile County Public School System.

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[2] **Singleton v. Jackson Municipal Separate School District,** 419 F. 2d 1211 (5th Circuit, en banc, December 1969); and **Ellis v. Board of Public Instruction of Orange County,** No. 29,124 (5th Circuit, February 17, 1970).

(1) Faculty and Staff

The School Board has conducted a positive and affirmative program to achieve complete desegregation of faculty. This has been accomplished in many instances at the expense of disregarding the Alabama Tenure Laws, as required by the Court.

The extent of faculty integration has increased sharply each year since August, 1966 when the Court first instructed the School Board to begin faculty desegregation. During the 1967-68 school year, fifteen teachers taught across racial lines. At the conclusion of the 1968-69 school year all but three of the then ninety-one schools of the system had integrated faculties.[3]

Throughout the 1969-70 school year every school in the system had an integrated faculty, and over 20% of the 2605 teachers in the system were teaching across racial lines in schools where the race of a majority of the student body was opposite their own. This includes both Negro teachers in predominantly white schools, as well as white teachers in predominantly Negro schools.[4]

As a result of implementation of the June 8 judgment of the Court of Appeals (the judgment sought to be reviewed by certiorari) with the opening of school in September, the faculty of every school will be approximately 60% white and 40% negro, the approximate ratio of negro and white teachers employed in the system as a whole.

It should be noted that there are negro principals in charge of predominantly white faculties; and negro principals in charge of predominantly white student bodies; as

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[3] Findings of Fact, October 13, 1967, paragraph 23; and Faculty Report to the District Court, December 3, 1968 respectively.

[4] Findings of Fact, April 14, 1970, Attachment E ... and ... Report to the Court dated November 26, 1969, filed at the direction of the Court.

well as white principals in charge of predominantly negro faculties and white principals in charge of predominantly negro students bodies.[5]

(2) Transportation

Mobile is a combined city-county school system with many rural schools. Thus in the traditional manner of rural school systems, there are a substantial number of school busses operated by the School Board to transport students in the rural areas of the county to these rural schools. A few busses are also used to provide transportation for a small number of students residing in remote outlying areas within the city limits.

At one time, during the era of the dual school system, the Board did in fact operate a dual transportation system with overlapping bus routes, utilizing transportation to preserve the dual system. This is no longer the case. Schools in that part of the system where transportation is provided, serve specific geographic attendance zones drawn by the District Court, and approved by the Court of Appeals, sitting en banc, **Singleton v. Jackson**, 419 F. 2d 1211; every zone is bi-racial and every school is integrated. School busses are routed in such a manner as to transport all students in each attendance zone to the school serving the zone. These routes are drawn without regard to race; they do not overlap; each bus picks up and transports every student on its route regardless of the race of the student; students are not segregated within the busses; and the same quality and extent of service is provided in all areas of the county without reference to the race of the students living in the area.[6] The transportation system is thus operated on a non-segregated and non-discriminatory basis in every respect.

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[5] Findings of Fact, April 14. 1970, page 8 . . . Refer also to Appendix I attached to this brief.

[6] Findings of Fact, April 14, 1970, pages 9-10, page 3 and Attachment A.

(3) Extra Curricular Activities, Including Sports

All extra curricular activities, including sports, over which the School Board has control, are being operated on a non-segregated basis throughout the system, and have been for several years.[7]

All athletic teams at every school are open to every student regardless of race. Participation by minority race students, particularly by negro students at traditionally white schools, has been substantial. For example, several predominantly white high schools this year fielded bi-racial basketball teams with more negro players than white. There is also cross-scheduling between traditionally negro schools and traditionally white schools in all major sports, in regular season play, and all tournament and play-off competitions are conducted on an integrated basis with traditionally white and traditionally negro schools in competition against each other.[8]

The same situation pertains to all other extra curricular activities over which the School Board has control, such as bands and other musical groups, ROTC units, speech and other academically related competitions, school related social events, parent related activities such as Parent Teacher Associations, and spectator events.[9]

(4) Services, Facilities and Programs

There is no separation of students within the individual schools by race, by sex (except for physical education and gender related courses such as home economics), by class, by tracts or on any basis, other than the normal division of students into grades and courses of study, which divisions have no racial basis.[10]

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[7] Findings of Fact, October 13, 1967, paragraph 22 ... and ... Findings of Fact, April 14, 1970, pages 14-15.
[8] Findings of Fact, April 14, 1970, pages 14-15.
[9] Findings of Fact, April 14, 1970, page 15.
[10] Findings of Fact, April 14, 1970, page 16.

All facilities are made available to all schools in the system without regard to the present or past racial composition of the schools. Within each individual school of the system all facilities are made available to all students on an equal basis, regardless of race. This includes not only facilities in the strict sense such as restrooms, lunchrooms, classrooms, laboratories, gymnasiums, libraries, playing fields and the like; but also, all services, activities and programs such as bands, orchestras, choral groups, clubs, counseling services, student governments, honor societies, publications staffs, intramural sports, assemblies, class elections and honors, parties and social events; and every other facility, activity and program of every school. This has been the situation for several years.[11]

All schools are treated equally without regard to the past or present racial composition of the school, with regard to the allocation of instructional materials, facilities, equipment, furnishings, supplies, textbooks, allocated funds and every other item provided to or for schools of the system; and courses of instruction are offered without regard to race. This also has been the situation for several years.[12]

Not only are all facilities, services, activities, and programs available to every student without regard to race, and operated on a non-segregated, non-discriminatory basis, but actual participation by minority race students is substantial.[13]

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[11] Findings of Fact, October 13, 1967, paragraph 22 . . . and . . . Findings of Fact, April 14, 1970, pages 16-18.

[12] Findings of Fact, October 13, 1967, paragraph 28 . . . and . . . Findings of Fact, April 14, 1970, page 17.

[13] Findings of Fact, April 14, 1970, pages 17-18.

(5) School Construction, Consolidation and Site Selection

The construction of or addition to any school, and the selection of any school site, must have the prior approval of the Court. This has been a part of the Mobile desegregation plan since 1968.

The School Board is genuinely perplexed and uncertain as to what shifting standard may next apply, or from time to time apply, with regard to school construction plans and programs. The Board has already suffered substantial financial loss as a consequence of land acquisition and other construction preparations made with District Court approval, later reversed and erased by the Court of Appeals.[14] As a result the School Board's building program has been at a total standstill for two years. No schools have been constructed and no school sites selected during this time.

The last schools constructed in the system were Dodge and Adams in 1967 and Grand Bay in early 1968. Dodge and Adams opened their doors for the first time in September 1967, both as fully integrated schools. The current enrollment at Dodge is 50 negro and 503 white. The current enrollment at Adams, initially a predominantly negro school, is 311 negro, and 686 white. Grand Bay first

[14] Orders of the District Court dated December 20, 1968 and March 14, 1969 approving the Board's construction plans for a new building at Howard Elementary School and an additional building at Toulminville High School were reversed by the Court of Appeals on June 3, 1969. As a result the School Board has suffered a financial loss of approximately a half million dollars (Brief of Appellees in Court of Appeals number 27,260 and 27,491, pages 6, 13 and 38, also from the transcript of testimony in those cases, Tr. pages 13-16, 29, and 124). Howard has now been abandoned because of its sub-standard facilities. Toulminville continues to operate with an enrollment of 420 negro and 247 white.

opened in September 1968. The current enrollment at Grand Bay is 146 negro and 630 white.[15]

Regarding school consolidation, there have been a number of consolidations, some proposed voluntarily by the School Board and some required by the District Court, within the past three years. Each has resulted in a significant increase in the extent of integration in the system.[16]

Regarding the location of temporary or portable classrooms, the Board follows a policy of locating these solely on the basis of and for the purpose of providing the facilities necessary to accommodate the students assigned to the various schools by the terms of the various orders of the District Court itself.[17]

(6) Transfer Policy

The entire transfer policy now in use, including a majority to minority transfer provision, was formulated by the court itself. This policy is operated in accordance with provision prescribed by the court and is applied uniformally throughout the system.[18]

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[15] Findings of Fact, April 14, 1970, page 19, and Attachment A, . . . and . . . Statistical table attached to the Court of Appeals opinion of August 4, 1970.

[16] Findings of Fact, April 14, 1970, pages 19-22 . . . Refer also to Appendix II attached to this brief.

[17] Findings of Fact, April 14, 1970, page 22.

[18] Findings of Fact, April 14, 1970, page 23.

(7) Student Assignment

The total desegration plan for the whole system, now in full implementation, assigns every student in the system to a school on the basis of a unitary system of geographic attendance zones drawn either by the District Court, the U. S. Department of Justice, or the Office of Education of the Department of Health, Education and Welfare.[19]

(8) Bi-Racial Committee

The District Court, upon the suggestion of the Court of Appeals, has appointed a bi-racial committee to advise and assist the School Board and the Court in the operation of the Court ordered desegregation plan and the maintenance of a unitary school system. The Committee, appointed by the District Court on August 12, 1970, has ten members, five negro and five white.

III. The Essential Points at Issue

In its opinion and judgment of July 8, 1970 (the judgment sought to be reviewed here by certiorari) the Court of Appeals concluded that the school system was unitary in all of its essential elements except three; faculty and staff, and student assignment.

With regard to two of these, faculty and staff, the system is substantially unitary and will be completely unitary upon the opening of school for the new school year on September 9, 1970. (See full discussion at pages 7 through 8 herein.)

In evaluating the unitary character of the system, there is at issue then, only the one remaining element, student assignment; and this is the only issue raised by the Petition. This is conceded by the Petition itself.

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[19] Findings of Fact, April 14, 1970, pages 2-3.

For the purposes of student assignment the system has traditionally been treated by the courts as three distinct parts: **rural,** comprised of all of the county except the cities of Mobile, Prichard and Chickasaw which comprise one large metropolitan area: metropolitan or city **west** of Interstate Highway 65; and metropolitan or city **east** of Interstate Highway 65.

The rural part of the system has been fully, affirmatively and satisfactorily desegregated as the result of the implementation in September 1969 of a plan of student assignment devised by the District Court, approved by the Court of Appeals, en banc (**Singleton v. Jackson,** supra) and reviewed by this Court on Certiorari (**Carter v. West Feliciana Parish School Board,** 396 U. S. 290, per curiam, 1970). So too, the metropolitan or city portion of the system **west** of Interstate Highway 65 has been fully, affirmatively and satisfactorily desegregated as a result of implementation of the same plan. The method of student assignment used in each of these areas is unitary attendance zones drawn by the court itself.

Thus we can further define the essential point at issue as relating only to the element of student assignment for that portion of the system located **east** of Interstate Highway 65.

On June 8, 1970 the Court of Appeals, upon an appeal from a District Court order of January 31, 1970, entered the judgment now sought to be reviewed by certiorari. This judgment concerned primarily student assignment for these schools east of Interstate Highway 65, and set out a complete and specific plan of student assignment for these schools; as well as some schools west of Interstate Highway 65 and two in the rural part of the system. The plan adopted by the Court of Appeals is one that had been submitted to the Court by the United States Department of Justice, which had in turn prepared the plan by modify-

ing a plan originally devised by the Office of Education of the Department of Health, Education and Welfare. As with the remainder of the system, the method of student assignment used by this plan is unitary zones. This plan also closed some schools, consolidated others, paired others, recast the grade structure of others and completely redesigned all of the attendance zones east of Interstate Highway 65. Under this plan, all of the 41 schools affected by the order lying east of Interstate Highway 65 become thoroughly bi-racial in student body composition, except eight elementary schools. This June 8 Opinion of the Court of Appeals is attached to the Petition at pages 8a-22a.

The professional staff of the school system moved immediately to begin compliance with this judgment of the Court of Appeals. Thereafter, on June 12 and July 13 the District Court issued implementing orders, making numerous modifications of the Court of Appeals plan, including elimination of two more of the remaining all negro schools, one by closing and one by redesigning attendance zones, leaving only six.[20] Thereafter, the Court of Appeals entered its order of August 4, 1970 which eliminated yet another all negro school, by assigning approximately 315 white students to Robbins Elementary School. This opinion of the Court of Appeals is attached hereto as Appendix III (A-4–A-15).

The five schools now remaining all negro, as classified by the court, after the August 4, Order of the Court of Appeals are:

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[20] The Court of Appeals in its August 4, 1970 Opinion says seven, counting Council with 40 white and 427 negro students as all black.

	White	Negro
Owens	2	1300
Fonville	37	787
Stanton Road	5	826
Brazier	0	1120
Grant	30	850

These schools are located in the centers of highly urbanized, densely populated residential areas that have, for the most part since the inception of this litigation, become very predominantly negro in character. Their racial make up stems entirely from voluntary residential patterns, and is thus the result of a pure defacto situation, rather than any practice of maintaining segregated schools by law, by design or by any other device (See **Deal v. Cincinnati Board of Education,** 419 F. 2d 1387).

Appendix III attached to this brief contains a statistical table prepared by the District Court as a part of its July 13, 1970 implementing order. This table sets out the enrollments of the schools east of Interstate Highway 65 (as well as those west of Interstate Highway 65 affected by the order) that will result from the June 8 Court of Appeals judgment, as issued, and as modified by the July 13, Order of the District Court. This table does not reflect the further modifications made by the District Court in its Order of July 30, nor those made by the Court of Appeals in its opinion and judgment on August 4, 1970, which accomplishes further desegregation.

ARGUMENT

I

This School System Should Not Be Required to Attempt to Implement Plan B-I Alternative Pendente Lite.

What does Petitioner really seek by this Petition for Writ of Certiorari? **Ostensibly,** to have this Court review a decision of the Court of Appeals in order to insure Petitioners due process right to an evidentiary hearing, and to resolve conflicting rulings of the Court of Appeals. **In reality,** however, what Petitioner is really seeking, under the guise of pursuing an evidentiary hearing and resolution of conflicts, is to have this Court substitute its remote consideration and judgment for that of the District Court and the Court of Appeals, by ordering the *pendente lite* implementation of a desegregation plan that has already been rejected by both lower Courts on two different occasions as "impracticable" and "educationally unsound".

Under the circumstances it is revealing, important and perhaps essential to note that Plan B-I Alternative itself has **never** been before **any** court for an evidentiary hearing.

Plan B-I Alternative was prepared by HEW in two stages. The first stage was the work of Dr. Joe Hall of the Florida School Desegregation Consulting Center. It was submitted to the District Court on July 10, 1969. Dr. Hall submitted a superficially impressive report of some 109 pages to the District Court. Well over half of these pages were devoted to a detailed discussion of typical Chamber of Commerce information, totally irrelevant to desegregation of the school system. For example, the report explains that among Mobile's major industries are cement, naval stores, ship repair, etc.; and its modern ocean terminal can handle 32 vessels simultaneously; and in 1965 unemployment in Mobile totaled 4.3 percent of the civilian "at

place'' labor force; and on and on it goes with reams of similar worthless information.[21]

Dr. Hall's discovery testimony was taken by deposition, during which he declined to indicate just how much of the seventeen (17) days he spent on this matter was expended on such trifling, but he did reveal the following very significant facts:[22]

> (a) The actual desegregation plan was prepared not by himself, but by one Dr. Stolee of Miami, Florida and one Dr. Weinkoff of South Carolina, both of whom had never been to Mobile before; both of whom had no prior contact with or information about Mobile or its school system; both of whom arrived in Mobile one day and departed the next, and prepared the recommendations during the short time of **less than 48 hours.**
>
> (b) He (Dr. Hall) had no ultimate authority with reference to the HEW report. Everything had to be approved by one Mr. Gregory Anrig of the Washington office of HEW. Mr. Anrig did not come to Mobile and had no prior contact with or information about the school system. He had occasion to look at the proposed recommendations only once, for a short time, and yet required numerous changes and alterations.

Dr. Hall indicated to School Board officials that it was impossible for HEW to do a proper job of evaluating the school system and developing adequate recommendations within the time allowed by the Court for the report; and yet because of delay by HEW half of this time had elapsed even before he got started on his work. Dr. Hall also stated that he is professionally opposed to the bussing of

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[21] Refer to the HEW report filed in the District Court on July 10, 1969.

[22] Discovery deposition of Dr. Joe Hall, filed in the District Court.

students for the sole purpose of achieving integration, and yet the ultimate HEW recommendations, after changes by Mr. Anrig, contained massive bussing in pursuit solely of some sort of racial balance.[23]

This first stage HEW report was filed in the District Court and was **totally unsupported** by testimony or explanation other than a very brief informal discussion with the District Court. This was conceded by Petitioner at pages 14b and 15b of the Appendix to its Petition for Writ of Certiorari previously filed in this Court in December 1969.

This report, and particularly the recommendations subsequently rejected as unsound by the lower courts but which Petitioner would now urge upon this Court, were soundly and thoroughly **discredited** by the only professional educator with any background knowledge of the school system who examined them.[24]

The second stage of Plan B-I Alternative was prepared by yet another HEW functionary, one Ernest S. Bunch, who styles himself Acting Senior Program Officer, Equal Educational Opportunities, and submitted to the District Court on December 1, 1969. This stage was the result of less than two weeks attention by Mr. Bunch. Like Dr. Hall before him, Mr. Bunch had no prior contact with or knowledge of the school system.

Mr. Bunch's work took place over a period of less than two weeks, immediately prior to December 1, 1969. Mr. Bunch made no independent study of the school system, conducted no research and gathered no original statistics or information. All Mr. Bunch did was to take statistical

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[23] Affidavit testimony of James A. McPherson, filed in the District Court on July 29, 1969, page 4.

[24] Affidavit testimony of James A. McPherson filed in the District Court on July 29, 1970 . . . and . . . Findings of Fact, April 14, 1970, pages 24-38.

data from the earlier HEW report, juggle these statistics in several different ways and then set out four different alternative plans, one of which was labeled Plan B-I Alternative. Mr. Bunch's ineptness is revealed in many aspects of his work, not the least of which are his recommendations that would make senior high schools out of elementary school plants, create one grade school and assign 2886 students to a school with a capacity of 980.

As with the original HEW report, this Plan B-I Alternative (as well as the other 3 alternatives) did not come before the Court for an evidentiary hearing, and in this instance there was not even an informal conference with the District Judge. Consequently, Plan B-I alternative is not only totally **unsupported** by testimony, but was before the District Court and is now before this Court, even without **explanation.** In seeking to justify the soundness and integrity of his work in the report itself, Mr. Bunch is unbelievably terse, stating only, "all of the plans are based on educational concepts promulgated either recently or not so recently."

Plan B-I Alternative was subsequently thoroughly examined and studied by a professional educator, whose affidavit testimony relative to this examination and study was filed in the District Court. This testimony pointed out numerous fatal defects, and totally discredited the plan, both from the standpoint of its educational unsoundness as well as its functional impossibility.[25]

With this spurious background, it should not be surprising that Plan B-I Alternative is educationally unsound, administratively infeasible, detrimental to the school system as a whole including both black and white students, and functionally incapable of implementation.

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[25] Affidavit testimony of James A. McPherson filed in the District Court on February 24, 1970 . . . Findings of Fact, April 14, 1970, pages 24-38.

This has been recognized by both the District Court and the Court of Appeals, sitting en banc (**Singleton v. Jackson, supra**).

Of the four different alternative plans submitted by HEW in its December 1, 1969 report, Plan B-I Alternative is by far the most unsound, most infeasible, most detrimental of all.

What are some of the specific defects in Plan B-I Alternative?

1. The plan purports to be based upon certain specific geographic zones, but no maps or other description reflecting or stating the location of the boundaries of zones is included with the plan. As far as present relevancy of the plan is concerned, the zones have been changed by the Courts on four separate occasions since the plan was filed on December 1, 1969. The plan, therefore, has absolutely no relation to reality at this time.

2. The basic statistical data upon which the plan was based is now outdated and inaccurate. The original statistical data was gathered and compiled by the School Board in September 1968, and reported to the court. It is now totally inaccurate. Spot checks made of this statistical information, shortly after the HEW report was filed on December 1, 1969, to determine accuracy and relevancy, indicated that in a number of instances the figures are in error by as much as 50%. The HEW report itself recognized this error and sought to excuse itself in advance with this seemingly innocuous statement: "These statistics may or may not agree with current figures of the Board of Education. However, they may be considered as relatively close approximates that could be used as a guide for a more precise sophistication in this vein." No doubt, fifty percent (50%) error is a close approximation to the sophisticated people of HEW, but it is quite impossible to operate a school system of 89 schools and 80,000 students on such a margin.

3. The plan requires the use of one elementary school (Gorgas) that has already been closed by the court and annexed to Toulminville High School (247 white, 420 negro) on which campus it is located, to take care of an overload there which occurs as a result of other provisions of the existing Court ordered desegregation plan. This leaves no place for the 890 elementary students assigned to the Gorgas Elementary School by Plan B-I Alternative.

4. Similarly, Plan B-I Alternative requires for use as an elementary school, another school (Hall) that is already operating under the court ordered plan as a junior high school. Either the 1149 elementary students assigned to Hall by Plan B-I Alternative or the 1246 junior high students already assigned there by the Court of Appeals will have no school to attend.

5. Plan B-I Alternative does not assign to any school the 806 elementary students (300 white and 506 negro) living in the Craighead zone.

6. Plan B-I Alternative makes no provision at all for the sixth grade students living in the following zones:

South Brookley	93
Williams	101
Indian Springs	76
Eight Mile	109
Dickson	121
Fonde	131
Shepard	74
Dodge	92
Total	797

7. Plan B-I Alternative would assign 1174 elementary students to an Arlington-Council complex (Arlington capacity 476, Council capacity 544), but Arlington has already been closed by the Court, and is being used as a book

depository and warehouse and as a laboratory for the in service training of teachers.

8. Plan B-I Alternative does not assign to any school the 591 elementary school students (424 white and 167 negro) living in the Woodcock zone.

9. Utilizing Plan B-I Alternative, results in each of the 264 6th grade students in the Owens zone being assigned to two different schools at the same time.

10. Plan B-I Alternative requires two one-grade elementary schools; seventeen two-grade elementary schools and fifteen three-grade elementary schools, making the development of an adequate program in these schools impossible, and creating an intolerable transportation problem for parents because of the helter-skelter separation and disbursement of students to separate schools. Some students will have been assigned to as many as four different schools by the time they reach the 6th grade, and none will have been assigned to less than three.

11. The basic concept and arrangement of Plan B-I Alternative is a non-contiguous pairing of schools, requiring one-half, more or less, of the students directly affected by the plant to attend school each year in schools far removed from their homes and neighborhoods. In all instances but ten, this requires the students to attend schools that are essentially across town from their homes; in the expected instances (ten schools) it requires attendance not only across town, but in a different city. (Indian Springs, Brazier, Robbins, Hamilton, Chickasaw, Palmer, Glendale, Fonde, Will and Whistler.) There are approximately 27,320 students directly affected by Plan B-I Alternative; this means that each year approximately 13,660 of these students would be so affected. It should be kept in mind that these are not high school or junior high school students, but young elementary school students in grades 1 through 5.

12. Because of the non-contiguous nature of the pairings and the illogical manner in which they have been set up, requiring the movement of students long distances across town and from one city to another, it will be **impossible** for the approximately 13,660 crosstown students to walk to their schools and vehicular transportation will be imperative. To complicate matters, most of the pairings present travel requirements that are inconsistent with commercial transportation routes and normal vehicular traffic patterns.[26] The only answer would be school bus transportation furnished by the School Board. At this point, in time, this is totally impossible; not merely difficult, but **impossible.**

To implement Plan B-I Alternative would require 233 new buses. The acquisition cost of these buses would be approximately $1,269,484.19 and there would be a yearly operating cost of $366,089.60 per year. This school system simply does not have the financial ability to accomplish such a requirement. It is entirely questionable as to whether the school system could adjust its finances to accommodate this requirement over a period of years; it is totally incapable of doing so immediately, between now and the opening of school on September 9, 1970.[27]

In the Petition a studied effort is made, by referring to the present existence of bus transported students, to give the impression that the bussing inherent in Plan B-I Alternative would be justified and would cause little or no problem. In evaluating this contention one must not loose sight of the fact that this is a consolidated city-rural system and that bus transportation has historically been

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[26] The Mobile municipal transit system has within the past year closed entirely, then reopened on a limited basis. At this point it is entirely speculative as to what bus service, if any, will be available in September.

[27] Affidavit testimony of James A. McPherson filed in the District Court on February 24, 1970, pages 11-12.

provided for students in the rural part of the system, as is traditional with virtually all rural and consolidated systems. The existence of rural transportation, however, is totally irrelevant and unrelated to the problem that would be created in the city portion of the system by Plan B-I Alternative, and offers no justification for Plan B-I Alternative nor solution to the massive transportation problem it would create.

One further point must be considered. Given the financial ability to purchase the necessary buses, they still could not be obtained. In June 1970, in an effort to replace worn equipment and to improve existing service with relation to present needs, an order was placed for 50 new buses. Some weeks, later, certain budgetary deficiencies and other financial problems necessitated a reduction of the order, at which time the manufacturer advised the school system that even the reduced order would not be filled because **no** buses are available for purchase.

These are some of the more readily apparent defects in Plan B-I Alternative which render it totally incapable of implementation. The Petition makes the bare, unsupported statement that Plan B-I Alternative has been **proved feasible.** This is simply not true. The plan has not been **proved**; on the contrary, it is not only untested, but comes to the Court unsupported by testimony and even without explanation. It is not **feasible**; it cannot be implemented.

Under such circumstances all logic and reason would dictate that this court defer to the on the scene judgment of the District Court and the Court of Appeals, both of whom have rejected Plan B-I Alternative. This is entirely consistent with the prior holdings of this Court and the various Courts of Appeal. See: **Green v. County School Board of New Kent County, Virginia,** 391 U. S. 430; **Brown v.**

Board of Education of Topeka, 349 U. S. 294; **United States v. Jefferson County Board of Education**, 372 F. 2d 836, 380 F. 2d 385, Cert. Denied 389 U. S. 840; **Downs v. School Board**, 236 F. 2d 988; **Northcross v. Board of Education, of the City of Memphis**, 302 F. 2d 818.

II

It Is Neither Necessary Nor Desirable to Impose ANY New Desegregation Plan on the Mobile County Public School System at This Time.

The unitary character of the school system has been fully discussed in a prior section of this brief. We respectfully submit that the June 8 and August 4 Orders of the Court of Appeals (including the July 13 and July 30 District Court modifications), when added to the other unitary features already existing in fact in the school system, result in a constitutionally sufficient, unitary school system, as per **Alexander v. Holmes County Board of Education**, supra; and that a further hasty rearrangement of the school system, pendente lite, is undesirable, unnecessary, and totally unwarranted.

The mere existence of one or more all negro or all white schools in the system is not unconstitutional and does not render the desegregation plan invalid. See: **Braxton v. Board of Public Instruction of Duval County, Florida**, ... F. Supp. ... (D. C. Fla. January 19, 1970); **Mannings v. Board of Public Instruction of Hillsborough County, Florida**, No. 28,643 (5th Circuit, May 11, 1970); **Deal v. Cincinnati**, 419 F. 2d 1387; **Ellis v. Board of Public Instruction of Orange County, Florida**, 423 F. 2d 203.

Nor must a racial balance be attained in order that a system be unitary and a plan sustained. **Kemp v. Beasley**, ... F. 2d ... (8th Circuit, 1970); **Carr v. Montgomery County Board of Education**, No. 29,521 (5th Circuit, June 29, 1970).

Nor is bussing or cross-bussing either independent of or in connection with pairing, **required** in order to create a unitary school system. **Kemp v. Beasley,** supra; **Deal v. Cincinnati,** supra; **Carr v. Montgomery County Board of Education,** supra.

We would point out one more circumstance of great psychological and human importance. The professional staff and personnel of the school system, and the people of Mobile, black and white alike, have been pushed to the limit of their endurance. It is not exaggeration to state that the school system is on the brink of exhaustion and disaster.

The school year traditionally opens in September each year. Normally, planning for each year would commence the preceding April or May. For the past five years it has been impossible to undertake any real preplanning because of last minute Court Orders requiring substantial rearrangement of the school system in one way or another; such as a shift from neighborhood attendance zones to complete freedom of choice and then back again; or a substantial rearrangement in attendance zones and grade structure. Court orders requiring new and different desegregation plans were imposed upon this school system on August 19, 1966 for the 1966-67 school year; August 24, 1967 for the 1967-68 school year; July 29 and August 3, 1968 for the 1968-69 school year; and on August 1, 1969 for the 1967-70 school year. The 1969-70 school year was further devastated by a further court order on January 31, 1970 requiring mid-year reassignment of some 15,000 students.

Since January 1, 1970 this school system has already been under five different Court ordered desegregation plans, none of which have been prepared by the Board or its professional staff. Two have been implemented, two superseded by subsequent orders before they could be im-

plemented, and one awaits implementation in September, although it is also on appeal to the Court of Appeals by the Petitioner herein.

Each of the last six Court ordered plans has been devised either by the District Court, the Court of Appeals, the Justice Department, HEW, or some combination thereof; but neither of these parties seems to be able to satisfy the other, and the Petitioner has never been satisfied with anything. As a result, the school system has become nothing more than a bloody corpse battered from pillar to post, now lying there oozing its life's blood away while being carved and hacked to bits by its various antagonists; and the School Board has been so stripped of its constitutional and legal function that it can do naught but watch and shudder with horror and remorse.

We respectfully urge your consideration of the possibility that another change in the desegregation plan, especially the imposition of some untried, unproven plan, pendente lite, before the end of the 1970-71 school year may well sound the death knell; and we request that you carefully balance this possibility against the question of whether a change in the existing desegration plan is constitutionally necessary or warranted in any event, in view of the unitary character of the system.

CONCLUSION

The Mobile Public School System is a unitary school system. Any further change in the desegregation plan at this time, can only be for the purpose of juggling people as mere numbers, in pursuit of some sort of artificial numerical racial balance. Consequently, while we voice no strong objection to a review of this case by the Supreme Court upon Writ of Certiorari, we do not perceive that such review is necessary, desirable or warranted.

We do most strongly urge, however, that there is nothing to require or justify the summary imposition of a still further and different plan of student assignment, *pendente lite*, whether it be the so-called Plan B-I Alternative suggested by Petitioner, or any other.

Plan B-I Alternative is particularly undesirable because it is before the court untested, unproved, unsupported by testimony, indeed unexplained. It is but a blind shot in the dark. It is educationally unsound, and functionally deficient; and it cannot be implemented.

We submit, with respect, that the Petition should be denied; and that the request for the imposition of Plan B-I Alternative, pendente lite, should also be denied.

Respectfully submitted

ABRAM L. PHILIPS, JR.
PALMER PILLANS
GEORGE F. WOOD

By .....

.....
Attorneys for the Board of School Commissioners of Mobile County, et al.

APPENDIX

APPENDIX I

School	Traditional Enrollment in "dual system" era	Enrollment (1969-70 school year) White	Enrollment (1969-70 school year) Negro	Faculty White	Faculty Negro	Principal
Adams	Negro	686	311	20	16	Negro White Asst.
Bienville	White	288	313	11	7	White
Burroughs	Negro	192	290	10	6	Negro
Craighead	White	290	569	14	12	White Negro Asst.
Dixon	Negro	249	189	8	5	Negro
Evans	White	54	87	8	8	White
Hall	Negro	180	838	12	16	White Negro Asst.
Hillsdale	Negro	431	217	16	11	Negro White Asst.
Leinkauf	White	224	235	9	4	White
Lott	Negro	465	145	12	8	Negro
Mount Vernon	White	84	358	5	8	White
Phillips	White	691	179	34	3	White Negro Asst.
Prichard	White	299	201	16	6	White Negro Asst.
St. Elmo	Negro	436	54	11	9	Negro White Asst.
Thomas	Negro	222	101	7	3	White
Whistler	White	227	231	13	5	White
Williamson	Negro	605	408	5	34	Negro White Asst.
Woodcock	White	183	186	7	5	White

All figures are taken from the Findings of Fact of the District Court on April 14, 1970.

APPENDIX II

(Taken from the April 14, 1970 Findings of Fact of the District Court, pages 19-22)

There have been a number of consolidations, some proposed voluntarily by the School Board and some required by the District Court, within the past three years. Each has resulted in a significant increase in the extent of integration. Some of these are:

1. Closing of the all negro Emerson Elementary School and distribution of its students to adjacent schools, one of which is traditionally negro (Council) and one traditionally white (Leinkauf), producing a current enrollment at Leinkauf of 224 white and 235 negro.

2. Closing of the all negro Robert Thompson School and consolidation of its students into the otherwise all white Wilmer School.

3. Closing of the all negro Cottage Hill Elementary School and the distribution of its students to the otherwise all white Fonde, Shepard and Dodge Elementary Schools.

4. Consolidation of the all white Citronelle and all negro Rosa Lott Schools, resulting in the following current enrollments: Citronelle, 800 white and 400 negro; Rosa Lott, 465 white and 145 negro.

5. Conversion of the all white Augusta Evans School to a school for special students that has a current enrollment of 54 white and 87 negro, and a faculty of 8 negro and 8 white.

6. Closing of the traditionally white Arlington Elementary School and the distribution of its students to surrounding schools, some of which are predominantly white, and some of which are predominantly negro.

7. Closing of the all negro Warren Elementary School and distribution of its students to the predominantly white Crichton Elementary School and other schools, predominantly negro, producing a current enrollment at Crichton of 457 white and 240 negro.

8. Closing of the all negro Barney School resulting in distribution of its students to surrounding schools, some predominantly white and some predominantly negro.

9. Consolidation of the all negro Belsaw and the all white Mount Vernon schools, resulting in integration of both schools.

10. Consolidation of the all negro St. Elmo and all white Theodore Schools, resulting in the following current enrollments: St. Elmo 436 white, 54 negro; Theodore 1466 white and 335 negro.

11. Consolidation of the all negro Burroughs, all negro Dixon and all negro Dawes Union Schools with the all white Griggs and all white Davis Schools resulting in:

(a) Closing of the all negro Dawes Union School

(b) Integration of the other four schools producing the following current enrollments:

Burroughs	—	192 white, 290 negro;
Griggs	—	865 white, 41 negro;
Davis	—	591 white, 178 negro;
Dixon	—	249 white, 189 negro.

APPENDIX III

In the
United States Court of Appeals
For the Fifth Circuit

No. 29332

Birdie Mae Davis, et al.,
Plaintiffs-Appellants-Cross Appellees,
and
United States of America, etc.,
Plaintiff-Intervenor-Appellants-Cross Appellees,
versus
Board of School Commissioners of Mobile County, et al,
Defendants-Appellees-Cross Appellants,
and
Twila Frazier, et al.,
Intervenors-Appellees.

Appeals from the United States District Court for the Southern District of Alabama

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(August 4, 1970)

Before Bell, Ainsworth, and Godbold,
Circuit Judges.

BELL, Circuit Judge: We consider again the Mobile School case. This time it comes to us on a motion for injunctive relief pending application for certiorari; or in the alternative, that we vacate the order of the district court entered on July 13, 1970 in implementation of our

decision of June 8, 1970 as to student assignment. We deny injunctive relief and modify the order of July 13, 1970. In addition, we require that a bi-racial advisory committee to the school board be established forthwith.[1]

It will be necessary to review the action in the district court since the issuance of the mandate of this court pursuant to our decision of June 8, 1970. The appeal which gave rise to that decision came to us in the posture of the Mobile school system being operated in an unconstitutional manner with respect to faculty and staff as well as student assignment. We reversed with direction. The direction was to order that the faculty and staff ratio which was decreed in *Singleton v. Jackson,* 5 Cir., 1969, 419 F. 2d 1211 (en banc consideration of Mobile and 12 additional school desegregation cases), be effected throughout the system. We also directed that the majority to minority transfer provision of *Ellis v. The Board of Public Instruction of Orange County, Florida,* 5 Cir., 1970, ... F. 2d ... [No. 29,124, slip opinion dated February 17, 1970], be required. The district court carried out this direction explicitly in an order dated June 12, 1970.

We also directed that a bi-racial committee be established to advise with the school board, and that stated duties be assigned the bi-racial committee. The district court stated in the order of June 12, 1970 that a supplemental order would be entered to effectuate this direction. Appellants state that the bi-racial committee has not been established.

With respect to the student assignment plan as revised by the district court in its order of July 13, 1970, some background is necessary. The case came to us with

[1] We treat this motion as a part of the previous appeal since the relief sought goes to the efficacy of the mandate of this court. For such purposes and so that our previous mandate may be amended, the mandate of the court is recalled.

60 per cent or 18,623 of the total of 30,884 Negro students assigned to 19 all Negro or virtually all Negro student body schools. We studied the several proposed student assignment plans in the record on appeal and concluded that the Department of Justice plan would disestablish the dual school system if modified in some particulars. Under that plan, as modified by us, the Mobile school system would open in September 1970 with no all Negro or virtually all Negro high or junior high schools and with only 8 all Negro elementary schools. The number of Negro students attending these all Negro or virtually all Negro student body schools was reduced from 18,623 to 7,725 or 25 per cent of the total, and these in grammar schools only. Every Negro child would receive an integrated junior high and high school education.

In addition to directing that the district court draw a new zone line so as to desegregate Toulminville High School (all Negro), we recognized the possibility of the figures on which we relied being inaccurate. In footnote 4 we said:

> "The defendants warn that the figures used by the Department of Justice and HEW are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district court. Such errors in information as do exist may be corrected and the situation adjusted accordingly by the district court."

It developed on remand that there were inaccuracies. For example, according to the order of the district court dated July 13, 1970 (chart attached to order showing racial composition and capacity of schools, reproduced infra), our plan made no provision for the 6th grade chil-

dren in the Indian Springs school. Our plan, which was based on the plans of record, was also in error in some instances as to school capacity, i. e., the schools would not accommodate the numbers contemplated. In this connection we assigned 2,886 students to Phillips Junior High which has a permanent capacity of 980. There were other such errors but not of this magnitude. We knew that some of the schools had portable class rooms but the record did not disclose the number.

At any rate, our view was and is that the exigencies of the situation required that this court promulgate a plan of student assignment meeting constitutional standards for immediate implementation rather than to continue the backing and filling which is inherent in the appellate and remand process, and which had been demonstrated by the many previous appeals of this matter including two during the 1969-70 school term. We consider school desegregation cases as presenting important public questions deserving of decision and facilitation in the most expeditious manner within the limits of due process and judicial propriety.

It was never our thought, although appellants seem to think otherwise, that the district court was stripped of its discretion to adjust the assignment plan to the end of making it workable. The district court could not, of course, make changes which would diminish the plan from the standpoint of constitutionality nor diminish the extent of the desegregation required by this court.

Indeed, immediately upon receipt of our decision, the defendant school board moved for rehearing on the ground that it was not possible to implement the plan of the decision, pointing to several errors. The motion was denied, the court being of the opinion that such problems or errors as might exist in the plan were for adjustment by the district court.

We turn then to the plan as revised by the district court to determine if the revisions amount to an improper departure from our decision. As stated, the plan of this court left 8 all Negro or virtually all Negro schools (all elementary), with 25 percent of the Negro student population assigned to them. The district court reduced the number of such schools to 7, with a total of 6,085 students or 19 percent of the Negro student population assigned to them. One of these, the Council school, which is considered by us as virtually all Negro, is to have 40 white students assigned along with 427 Negro students whereas in our plan only 4 whites were to be so assigned.

The district court proceeded from the standpoint of the zoning of the whole district. We considered only that portion of the system east of Highway I-65 except where necessary to go to the west to aid in reducing the number of all Negro schools. The problem was that a majority of the Negro population was concentrated within the city to the east of I-65. In revising our plan, the district court finalized the zoning for the entire system including elementary, junior high and high schools. The feeder system outlined in its order of July 13, 1970 is based on the school zone lines and is nothing more. It is in no way a departure from the applicable zones.

The differences between the plan contained in our June 8, 1970 opinion and the revised district court plan are reflected in the following charts which are a part of the order of the district court of July 13, 1970:

HIGH SCHOOL

Name of School	Grade	U. S. District Court Plan		Fifth Circuit Plan		Total Under District Court Plan	Permanent Capacity
		White	Negro	White	Negro		
Rain	7-12	1143	112	1150	97	1255	868
Williamson	10-12	824	491	880	471	1315	1305
Murphy	10-12	1300	1027	1643	1761	2327	2813
Toulminville	10-12	247	420	9	740	667	609
Blount-Carver	9-12	1022	1693	854	1846	2715	2697
Vigor-Bienville	9-12	1000	1425	1134	1211	2425	2204
Shaw	9-12	1312	237	1250	240	1549	1015
Davidson	9-12	2201	80	2302	72	2281	1943

MIDDLE SCHOOL

Name of School	Grade	U. S. District Court Plan		Fifth Circuit Plan		Total Under District Court Plan	Permanent Capacity
		White	Negro	White	Negro		
B. C. Rain	7-12	1143	112	1150	97	1255	868
Banes	6-9	770	220	1292	977	990	1148
Hall	6-9	336	910	1292	977	1246	1224
Dunbar	6-9	170	770	181	985	947	1064
Central	6-9	387	1164	468	1260	1551	1508
Washington	6-9	748	709	1170	1716	1457	1015
Phillips	6-9	417	695	1170	1716	1112	980
Trinity Gardens	6-8	320	540	380	690	861	868
Prichard	6-8	220	458	240	410	678	615
Mobile County Training	6-8	333	885	432	859	1218	1232
Clark	6-8	703	846	536	948	1549	1392
Scarborough	6-8	884	11	638	77	895	896
Hillsdale	6-8	451	210	431	217	661	784
Azalea Road	7-8	996	38	1039	38	1034	986
Eight Mile*	1-8	549	110	280*	66*	659	598

*District Court plan grade structure is 1-8 and the Fifth Circuit's Plan grade structure is 1-6.

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ELEMENTARY SCHOOL

Name of School	Grade	U. S. District Court Plan White	U. S. District Court Plan Negro	Fifth Circuit Plan White	Fifth Circuit Plan Negro	Total Under District Court Plan	Permanent Capacity
South Brookley	1-6	490	71	502	71	561	408
Williams	1-6	561	45	571	43	606	408
Morningside	1-5	672	0	631	0	672	544
Maryvale	1-5	402	257	441	117	659	544
Craighead	1-5	300	506	347	489	806	850
Council	1-5	40	427	4	391	467	544
Arlington	1-5	163	178	160	170	341	476
Caldwell	1-5	87	431	0	350	518	510
Leinkauf	1-5	118	393	273	165	511	442
Owens	1-5	2	1300	2	1414	1302	1428
Old Shell Road	1-5	482	7	332	295	489	476
Woodcock	1-5	255	0	424	167	255	570
Mertz	1-5	415	110	498	104	525	510
Fonville	1-5	37	787	0	1000	824	1088
Westlawn	1-5	384	0	532	0	384	510

ELEMENTARY SCHOOL (Continued)

Name of School	Grade	U. S. District Court Plan		Fifth Circuit Plan		Total Under District Court Plan	Permanent Capacity
		White	Negro	White	Negro		
Crichton	1-5	379	329	438	348	708	714
Stanton Road	1-5	5	826	6	900	831	1020
Frazier	1-5	0	1120	10	1022	1120	1156
Grant	1-5	30	850	15	1285	880	1122
Glendale	1-5	65	480	434	931	545	884
Palmer	1-5	235	435	434	931	670	568
Whitley	1-5	261	314	216	481	655	578
Robbins***	1-5	0	775	638	855	775	850
Hamilton***	1-5	630	15	638	855	645	646
Thomas	1-5	180	95	180	95	275	272
Whistler	1-5	181	205	181	205	386	510
Chickasaw	1-5	443	0	473	100	443	612
Eight Mile*	1-8	549	110	280	66*	659	598
Indian Springs**	1-6	445	15	535	11	460	408
Orchard	1-5	714	161	754	113	875	816

ELEMENTARY SCHOOL (Continued)

Name of School	Grade	U. S. District Court Plan		Fifth Circuit Plan		Total Under District Court Plan	Permanent Capacity
		White	Negro	White	Negro		
Forest Hill	1-5	624	0	560	0	624	578
Will	1-5	534	299	657	175	833	816
Austin	1-5	488	10	396	22	498	408
Dickson	1-6	726	5	835	193	731	782
Fonde	1-6	773	13	679	11	786	850
Shepard	1-6	415	29	409	29	444	544
Dodge	1-6	503	50	675	65	553	816
Corgas	CLOSED						

* District Court plan grade structure is 1-8 and the Fifth Circuit plan is grade structure 1-6.

** Fifth Circuit plan made no provision for 6th grade at Indian Springs.

***These schools will be integrated by pairing. (discussed hereinafter)

We approve the plan as revised by the district court with one exception. The plan of this court required the pairing of Palmer and Glendale, Robbins and Hamilton, and Eanes and Hall. The latter two are junior high schools. The district court plan eliminates this pairing requirement. This is proper except as to Robbins and Hamilton. These schools are contiguous; Robbins continues with an all Negro student body while Hamilton is predominantly white. The district court is directed to amend its plan so as to pair these two schools. This will reduce the number of all Negro student body schools to 6 with a total of 5,310 or 17 per cent of the total Negro student population assigned to such schools. Thus it is with this modification of the district court plan, the revised plan achieves an improved result.

We are left with the feeling that this case would not again be here if the revisions had been considered by a bi-racial advisory committee. We directed in our decision of June 8, 1970 that the promulgation and maintenance of zone lines be a matter, among others, for consideration by the bi-racial committee.

The motion of appellants for an order that the district court be required forthwith to carry out our direction to establish a bi-racial committee is granted.

The motion of appellants to vacate the order of July 13, 1970 of the district court is denied subject however to it being amended as stated herein by pairing Robbins and Hamilton.

The motion to implement the student assignment plan set out in our decision of June 8, 1970 is denied in light of the fact that we have now approved an improved plan which the district court is directed to effectuate upon receipt of the mandate of this court.

The motion to retain jurisdiction in this court with the district court to be used as a special master, cf. *Alexander v. Holmes County*, 1969, 396 U. S. 19, 90 S. Ct. 29, 24 L. Ed. 2d 19; *United States v. Hinds County*, 5 Cir., 1969, 417 F. 2d 852, is denied. Such a procedure seems unnecessary in view of the expedited appellate procedures now applicable in this circuit. See *Singleton v. Jackson*, supra, 419 F. 2d at 1222, and the procedure outlined in footnote 2 to our decision in this matter of June 8, 1970.

This opinion and order amends and supplements our decision and order of June 8, 1970, and together, they shall be considered the final order on this appeal for mandate and certiorari purposes.

Meanwhile, the district court is to proceed to carry out the mandate of this court to the end of converting the dual school system of Mobile County into a unitary system as directed notwithstanding any application for certiorari.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 436

BIRDIE MAE DAVIS, ET AL., PETITIONERS

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This case was initiated in 1963 by private plaintiffs seeking to desegregate the public schools of Mobile, Alabama. The United States intervened in June 1967 as a party plaintiff under Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h–2) and since that time has actively participated in the litigation.

The Mobile County school system has approximately 73,504 students with a racial composition which is 42 percent black. It is the largest system of public schools in Alabama and encompasses both rural and urban areas. About 75 percent of the students attend

402-072—70——1

63 schools located in the metropolitan portion of the system. Slightly less than half of the students attending metropolitan area schools are black.

The history of the present litigation is summarized in the petition and is recorded in a lengthy series of decisions of the court of appeals: *Davis* v. *Board of School Commissioners of Mobile County,* 318 F. 2d 63; *Davis v. Board of School Commissioners of Mobile County,* 322 F. 2d 356, amended in part on rehearing, 322 F. 2d 359, certiorari denied, 375 U.S. 894, rehearing denied, 376 U.S. 928; *Davis* v. *Board of School Commissioners of Mobile County,* 333 F. 2d 53, certiorari denied, 379 U.S. 844; *Davis* v. *Board of School Commissioners of Mobile County,* 364 F. 2d 896; *Davis* v. *Board of School Commissioners of Mobile County,* 393 F. 2d 690; *Davis* v. *Board of School Commissioners of Mobile County,* 414 F. 2d 609; *sub nom. Singleton* v. *Jackson Municipal Separate School District,* 419 F. 2d 1211 (en banc), reversed in part, *sub nom. Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290; *Davis* v. *Board of School Commissioners of Mobile County,* No. 29,332 (decided, June 8, 1970; Pet. App. 8a–22a) (the decision here sought to be reviewed).

The petitioners here seek review of the court of appeals' approval of a desegregation plan for metropolitan Mobile based upon a plan recommended by the government in that court.[1] The record in this case contains not only an extensive catalogue of student-

[1] This plan was originally submitted by the government to the district court on January 27, 1970, as a plan which could be implemented immediately, *pendente lite,* to remain in effect until the conclusion of the then-current school year.

assignment devices previously used to maintain a dual school system, but also a variety of available plans to convert the system to a unitary one. Accordingly, this may be an appropriate case for this Court's consideration of the constitutional obligations of metropolitan school districts which have substantial residential segregation by race and a background of de jure segregation.

While the general question of appropriate methods for desegregating schools in such urban areas is already before the Court in *Swann* v. *Charlotte-Mecklenburg Board of Education,* No. 281, this Term, certiorari granted, June 29, 1970, the question raised here is somewhat different from that in *Charlotte-Mecklenburg,* and perhaps more pressing. In the *Charlotte-Mecklenburg* case the Court is asked to decide whether the district court abused its remedial discretion,[2] but here, if the petition is granted, the Court will consider whether the decision of the court of appeals falls short of minimum constitutional requirements.

Although the plan approved by the court of appeals was recommended to that court by the government as an appropriate judicial remedy and we have therefore not joined in the petition, we believe that the issues presented are important and warrant review by this Court. Such review, of course, need not, and

[2] See, *e.g.*, *Brown* v. *Board of Education*, 349 U.S. 294, 299–300; *United States* v. *Montgomery County Board of Education*, 395 U.S. 225; *Green* v. *County School Board*, 391 U.S. 430, 438 n. 4, 439, 442 n. 6; *Griffin* v. *School Board*, 377 U.S. 218, 232–234.

should not, delay implementation of the plan, as modified by the court of appeals,* in time for the opening of school.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

AUGUST 1970.

* The subsequent orders of the district court and opinion of the court of appeals, which modified the plan and which were not included in the petition, are reproduced, *infra*, as an appendix to this memorandum.

APPENDIX

In the United States District Court for the Southern District of Alabama, Southern Division

Civil Action No. 3003-63

Birdie Mae Davis, et al, plaintiff, and United States of America, by Ramsey Clark, Attorney General, etc., plaintiff-intervenor

v.

Board of School Commissioners of Mobile County, et al, defendants, and Twila Frazier, et al, intervenors

ORDER

Pursuant to the mandate of the Fifth Circuit Court of Appeals dated June 8, 1970, and received by this court on June 10, 1970, which reverses and remands with directions, this Court's desegregation plan for the Mobile County Public School System of January 31, 1970, and after consideration of such mandate, it is hereby ORDERED, ADJUDGED and DECREED by the Court that the defendants, Mobile County School Board, implement the desegregation of the Mobile County Public School System on or before July 1, 1970, as follows:

STUDENT ASSIGNMENT

It is Ordered that those area attendance zones offered by the United States Justice Department on January 27, 1970, be assigned as the school zones under which the public school system will operate beginning with the 1970 Fall semester until further orders

of this Court. The school board is directed to begin preparation and implementation of such area school zones immediately with the following exceptions: Toulminville High School attendance zone area and the Emerson Elementary School area shall be drawn by the Court and the Court shall submit this order within the immediate future. The school board is directed to furnish to the Court on Tuesday, June 16, 1970, the pupil population data for the Emerson Elementary and Toulminville High School attendance area including grade attendance and enrollment. Other than the above referenced attendance areas, the Justice Department attendance zones as drafted on January 27, 1970, shall be implemented as drafted.

FACULTY AND STAFF DESEGREGATION

On or before July 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. Under the present faculty employment the racial composition of Mobile County School system is approximately 60% white and 40% Negro; therefore, in accordance with the above stated policy it shall be necessary for the school faculty assignments to be made on a 60% white and 40% Negro basis. Beginning the 1970 Fall semester, the school board shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members

of its staff as a condition of continued employment to accept new assignments.

Paragraph 7 of this Court's decree entered on August 1, 1969, pertaining to faculty reduction, vacancies and demotion are incorporated herein and shall remain in full force and effect.

MAJORITY TO MINORITY TRANSFER POLICY

The school board shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority and all such transferring students must be given transportation to their chosen school if they desire it and the transferee is to be given priority for space.

TRANSPORTATION, EXTRA CURRICULAR ACTIVITIES AND FACILITIES

The School Board is directed to continue to operate transportation, extra curricular activities and school facilities on a non-discriminatory basis in accordance with the past orders of this Court.

By supplemental order to be entered within the immediate future the Court shall direct that there be established a biracial committee serving in an advisory capacity to the school board in the following areas of the public school system operations: (1) Application of majority to minority transfer rule; (2) promulgation and maintenance of area within zone lines; (3) school site location.

DONE THIS THE 12th day of June 1970.

DANIEL H. THOMAS,
United States District Judge.

In the United States District Court for the Southern District of Alabama, Southern Division

Civil Action No. 3003–63

BIRDIE MAE DAVIS, ET AL., PLAINTIFF, AND UNITED STATES OF AMERICA, BY RAMSEY CLARK, ATTORNEY GENERAL, ETC., PLAINTIFF-INTERVENOR

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL., DEFENDANTS, AND TWILA FRAZIER, ET AL., INTERVENORS

ORDER

The Order of this Court entered in this case on June 12, 1970, is amended in the following respect:

Pursuant to Footnote "4" of the opinion of the Fifth Circuit Court of Appeals in this case, entered on June 8, 1970, the area attendance zones for the 1969–70 school year are amended as shown by the maps hereto attached marked Exhibit "1", "2", and "3" for the elementary school, middle school and high schools respectively, which said maps show the area attendance zone for each school and the grade structure for each school.

Exhibit "4" attached hereto shows the feeder pattern for the entire school district. The facility heretofore known as the Gorgas School is closed and the students heretofore attending Gorgas are assigned to Fonville. In all other respects the Order of June 12, 1970, remains in full force and effect.

Done this, the 13th day of July, 1970.

DANIEL H. THOMAS,
United States District Judge.

EXHIBIT "4"

Feeder pattern

Elementary	Middle	High
Crichton		
Stanton Road	Phillips	Toulminville.
Dodge		
Shepard		
Fonde		
Dickson	Azalea Road	Davidson
Austin	Scarborough	Davidson
Forest Hill		
Orchard [1]	Scarborough	Shaw
Orchard [1]		
Will	Hillsdale	Shaw
Williams		
South Brookley	B. C. Rain	B. C. Rain
Morningside		
Maryvale	Eanes	
Craighead		Williamson
Arlington		
Council	Hall	Williamson
Caldwell		
Leinkauf	Dunbar	
Owens [2]		Murphy
Old Shell		
Woodcock [3]	Central	Murphy
Fonville		
West Lawn		
Mertz	Washington	
Brazier		
Thomas	Trinity Gardens	Blount
Whistler		
Robbins (Northern)		
Hamilton		
Chickasaw Southern)	Clark	Vigor
Robbins (Southern)		
Chickasaw (Northern)		
Grant (Western)	Clark	Blount
Glendale (Western)		
Palmer (Western)		
Grant (Eastern)	Prichard	Vigor
Palmer (Eastern)		
Whitley	Mobile County Training	Vigor
Glendale (Eastern)		
Eight Mile	Eight Mile	Blount
Indian Springs (Eastern)	Eight Mile	Blount

[1] Students in the eastern section of the Orchard Elementary attendance area will attend Scarborough Jr. High. Those in the western and southern sections will attend Hillsdale.

[2] With some exceptions (see maps) students in the southeast section of the Owens Elementary attendance area will attend Dunbar Middle School.

[3] Students in the eastern section of the Woodcock Elementary attendance area will attend Dunbar Middle School.

In the United States Court of Appeals for the Fifth Circuit

No. 29332

BIRDIE MAE DAVIS, ET AL, PLAINTIFFS-APPELLANTS-CROSS APPELLEES, AND UNITED STATES OF AMERICA, ETC., PLAINTIFFS-INTERVENOR-APPELLANTS-CROSS APPELLEES

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL, DEFENDANTS-APPELLEES-CROSS APPELLANTS, AND TWILA FRAZIER, ET AL, INTERVENORS-APPELLEES

Appeals from the United States District Court for the Southern District of Alabama

(August 4, 1970)

Before BELL, AINSWORTH, and GODBOLD, Circuit Judges.

BELL, *Circuit Judge:* We consider again the Mobile School case. This time it comes to us on a motion for injunctive relief pending application for certiorari; or in the alternative, that we vacate the order of the district court entered on July 13, 1970 in implementation of our decision of June 8, 1970 as to student assignment. We deny injunctive relief and modify the order of July 13, 1970. In addition, we require that a bi-racial advisory committee to the school board be established forthwith.[1]

[1] We treat this motion as a part of the previous appeal since the relief sought goes to the efficacy of the mandate of this court. For such purposes and so that our previous mandate may be amended, the mandate of the court is recalled.

It will be necessary to review the action in the district court since the issuance of the mandate of this court pursuant to our decision of June 8, 1970. The appeal which gave rise to that decision came to us in the posture of the Mobile school system being operated in an unconstitutional manner with respect to faculty and staff as well as student assignment. We reversed with direction. The direction was to order that the faculty and staff ratio which was decreed in *Singleton v. Jackson*, 5 Cir., 1969, 419 F.2d 1211 (en banc consideration of Mobile and 12 additional school desegregation cases), be effected throughout the system. We also directed that the majority to minority transfer provision of *Ellis v. The Board of Public Instruction of Orange County, Florida*, 5 Cir., 1970, —— F.2d —— [No. 29,124, slip opinion dated February 17, 1970], be required. The district court carried out this direction explicitly in an order dated June 12, 1970.

We also directed that a bi-racial committee be established to advise with the school board, and that stated duties be assigned the bi-racial committee. The district court stated in the order of June 12, 1970 that a supplemental order would be entered to effectuate this direction. Appellants state that the bi-racial committee has not been established.

With respect to the student assignment plan as revised by the district court in its order of July 13, 1970, some background is necessary. The case came to us with 60 per cent or 18,623 of the total of 30,884 Negro students assigned to 19 all Negro or virtually all Negro student body schools. We studied the several proposed student assignment plans in the record on appeal and concluded that the Department of Justice plan would disestablish the dual school system if modified in some particulars. Under that plan, as

modified by us, the Mobile school system would open in September 1970 with no all Negro or virtually all Negro high or junior high schools and with only 8 all Negro elementary schools. The number of Negro students attending these all Negro or virtually all Negro student body schools was reduced from 18,623 to 7,725 or 25 per cent of the total, and these in grammar schools only. Every Negro child would receive an integrated junior high and high school education.

In addition to directing that the district court draw a new zone line so as to desegregate Toulminville High School (all Negro), we recognized the possibility of the figures on which we relied being inaccurate. In footnote 4 we said:

> The defendants warn that the figures used by the Department of Justice and HEW are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district court. Such errors in information as do exist may be corrected and the situation adjusted accordingly by the district court.

It developed on remand that there were inaccuracies. For example, according to the order of the district court dated July 13, 1970 (chart attached to order showing racial composition and capacity of schools, reproduced infra), our plan made no provision for the 6th grade children in the Indian Springs school. Our plan, which was based on the plans of record, was also in error in some instances as to school capacity, i.e., the schools would not accommodate the numbers contemplated. In this connection we assigned 2,886 students to Phillips Junior High which has a permanent capacity of 980. There were other such

errors but not of this magnitude. We knew that some of the schools had portable class rooms but the record did not disclose the number.

At any rate, our view was and is that the exigencies of the situation required that this court promulgate a plan of student assignment meeting constitutional standards for immediate implementation rather than to continue the backing and filling which is inherent in the appellate and remand process, and which had been demonstrated by the many previous appeals of this matter including two during the 1969–70 school term. We consider school desegregation cases as presenting important public questions deserving of decision and facilitation in the most expeditious manner within the limits of due process and judicial propriety.

It was never our thought, although appellants seem to think otherwise, that the district court was stripped of its discretion to adjust the assignment plan to the end of making it workable. The district court could not, of course, make changes which would diminish the plan from the standpoint of constitutionality nor diminish the extent of the desegregation required by this court.

Indeed, immediately upon receipt of our decision, the defendant school board moved for rehearing on the ground that it was not possible to implement the plan of the decision, pointing to several errors. The motion was denied, the court being of the opinion that such problems or errors as might exist in the plan were for adjustment by the district court.

We turn then to the plan as revised by the district court to determine if the revisions amount to an improper departure from our decision. As stated, the plan of this court left 8 all Negro or virtually all Negro schools (all elementary), with 25 percent of the Negro student population assigned to them. The dis-

trict court reduced the number of such schools to 7, with a total of 6,085 students or 19 percent of the Negro student population assigned to them. One of these, the Council school, which is considered by us as virtually all Negro, is to have 40 white students assigned along with 427 Negro students whereas in our plan only 4 whites were to be so assigned.

The district court proceeded from the standpoint of the zoning of the whole district. We considered only that portion of the system east of Highway I–65 except where necessary to go to the west to aid in reducing the number of all Negro schools. The problem was that a majority of the Negro population was concentrated within the city to the east of I–65. In revising our plan, the district court finalized the zoning for the entire system including elementary, junior high and high schools. The feeder system outlined in its order of July 13, 1970 is based on the school zone lines and is nothing more. It is in no way a departure from the applicable zones.

The differences between the plan contained in our June 8, 1970 opinion and the revised district court plan are reflected in the following charts which are a part of the order of the district court of July 13, 1970:

High school

Name of school	Grade	U.S. district court plan		Fifth circuit plan		Total under district court plan	Permanent capacity
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Rain	7-12	1143	112	1150	97	1255	98
Williamson	10-12	824	491	880	471	1315	126
Murphy	10-12	1300	1027	1643	1761	2327	251
Toulminville	10-12	247	420	9	740	667	69
Blount-Carver	9-12	1022	1693	854	1846	2715	287
Vigor-Bienville	9-12	1000	1425	1134	1211	2425	228
Shaw	9-12	1312	237	1250	240	1549	183
Davidson	9-12	2201	80	2202	72	2281	196

Middle school

Name of school	Grade	U.S. district court plan		Fifth circuit plan		Total under district court plan	Permanent capacity
		White	Negro	White	Negro		
B. C. Rain	7-12	1143	112	1150	97	1255	868
Banes	6-9	770	220	1292	977	990	1148
Hall	6-9	336	910	1292	977	1246	1224
Dunbar	6-9	170	770	181	985	947	1064
Central	6-9	387	1164	468	1260	1551	1508
Washington	6-9	748	700	1170	1716	1457	1015
Phillips	6-9	417	695	1170	1716	1112	980
Trinity Gardens	6-8	320	540	380	690	861	868
Prichard	6-8	220	458	240	410	678	615
Mobile County Training	6-8	333	885	432	859	1218	1232
Clark	6-8	703	846	536	948	1549	1392
Scarborough	6-8	884	11	638	77	895	896
Hillsdale	6-8	451	210	431	217	661	784
Azalea Road	7-8	996	38	1039	38	1034	986
Eight Mile [1]	1-8	549	110	[1] 280	[1] 66	659	598

[1] District court plan grade structure is 1-8 and the Fifth Circuit's Plan grade structure is 1-6.

Elementary school

Name of school	Grade	U.S. district court plan		Fifth circuit plan		Total under district court plan	Permanent capacity
		White	Negro	White	Negro		
South Brookley	1-6	490	71	502	71	561	408
Williams	1-6	561	45	571	43	606	408
Morningside	1-5	672	0	631	0	672	544
Maryvale	1-5	402	257	441	117	659	544
Craighead	1-5	300	506	347	489	806	850
Council	1-5	40	427	4	391	467	544
Arlington	1-5	163	178	160	170	341	476
Caldwell	1-5	87	431	0	350	518	510
Leinkauf	1-5	118	303	273	165	511	442
Owens	1-5	2	1,300	2	1,414	1,302	1,428
Old Shell Road	1-5	482	7	332	295	489	476
Woodcock	1-5	255	0	424	167	255	570
Marx	1-5	415	110	496	104	525	510
Fonville	1-5	37	787	0	1,000	824	1,088
Westlawn	1-5	384	0	532	0	384	510
Crichton	1-5	379	329	438	348	708	714
Stanton Road	1-5	5	826	6	900	831	1020
Frazier	1-5	0	1120	10	1022	1120	1156
Grant	1-5	30	850	15	1285	880	1122
Glendale	1-5	65	480	434	931	545	884
Palmer	1-5	235	435	434	931	670	868
Whitley	1-5	261	314	216	481	655	578
Robbins [1]	1-5	0	775	638	855	775	850
Hamilton [1]	1-5	630	15	638	855	645	646
Thomas	1-5	180	95	180	93	275	272
Whistler	1-5	181	205	181	205	386	510

See footnotes at end of table.

Elementary school—Continued

Name of school	Grade	U.S. district court plan		Fifth circuit plan		Total under district court plan	Permanent capacity
		White	Negro	White	Negro		
Chickasaw	1-5	443	0	473	100	443	612
Eight Mile [1]	1-8	549	110	290	[2] 66	659	868
Indian Springs [3]	1-6	445	15	535	11	460	408
Orchard	1-5	714	161	754	113	875	814
Forest Hill	1-5	624	0	560	0	624	575
Will	1-5	534	299	657	175	833	816
Austin	1-5	488	10	396	22	498	408
Dickson	1-6	726	5	835	193	731	782
Fonde	1-6	773	13	679	11	786	850
Shepard	1-6	415	29	409	29	444	544
Dodge	1-6	503	50	675	65	553	816
Corgas [4]							

[1] These schools will be integrated by pairing (discussed hereinafter;.
[2] District court plan grade structure is 1-8 and the fifth circuit plan is grade structure 1-6.
[3] Fifth circuit plan made no provision for 6th grade at Indian Springs.
[4] Closed.

We approve the plan as revised by the district court with one exception. The plan of this court required the pairing of Palmer and Glendale, Robbins and Hamilton, and Eanes and Hall. The latter two are junior high schools. The district court plan eliminates this pairing requirement. This is proper except as to Robbins and Hamilton. These schools are contiguous; Robbins continues with an all Negro student body while Hamilton is predominantly white. The district court is directed to amend its plan so as to pair these two schools. This will reduce the number of all Negro student body schools to 6 with a total of 5,310 or 17 per cent of the total Negro student population assigned to such schools. Thus it is that with this modification of the district court plan, the revised plan achieves an improved result.

We are left with the feeling that this case would not again be here if the revisions had been considered by a bi-racial advisory committee. We directed in our decision of June 8, 1970 that the promulgation and

maintenance of zone lines be a matter, among others, for consideration by the bi-racial committee.

The motion of appellants for an order that the district court be required forthwith to carry out our direction to establish a bi-racial committee is granted.

The motion of appellants to vacate the order of July 13, 1970 of the district court is denied subject however to it being amended as stated herein by pairing Robbins and Hamilton.

The motion to implement the student assignment plan set out in our decision of June 8, 1970 is denied in light of the fact that we have now approved an improved plan which the district court is directed to effectuate upon receipt of the mandate of this court.

The motion to retain jurisdiction in this court with the district court to be used as a special master, cf. *Alexander v. Holmes County,* 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19; *United States v. Hinds County,* 5 Cir., 1969, 417 F.2d 852, is denied. Such a procedure seems unnecessary in view of the expedited appellate procedures now applicable in this circuit. See *Singleton v. Jackson,* supra, 419 F.2d at 1222, and the procedure outlined in footnote 2 to our decision in this matter of June 8, 1970.

This opinion and order amends and supplements our decision and order of June 8, 1970, and together, they shall be considered the final order on this appeal for mandate and certiorari purposes.

Meanwhile, the district court is to proceed to carry out the mandate of this court to the end of converting the dual school system of Mobile County into a unitary system as directed notwithstanding any application for certiorari.

In the United States District Court for the Southern District of Alabama, Southern Division

Civil Action No. 3003–63

BIRDIE MAE DAVIS, ET AL, PLAINTIFF, AND UNITED STATES OF AMERICA BY RAMSEY CLARK, ATTORNEY GENERAL, ETC., PLAINTIFF-INTERVENOR

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL, DEFENDANTS, AND TWILA FRAZIER, ET AL, INTERVENORS

ORDER APPOINTING BI-RACIAL COMMITTEE

Pursuant to Order of this Court of July 28, 1970, the following are hereby appointed as a Bi-Racial Committee in this cause for the purposes hereinafter recited: Dr. Sanford D. Bishop, Mr. Isom Clemon, Mr. M. C. Farmer, Mrs. H. Eugene Gibbons, Mrs. T. C. Gill, Mr. Arthur Outlaw, Bishop W. T. Phillips, Mr. O. B. Purifoy, Mr H. Minge Reed, Jr., and Mr. Beverly R. Wilson, Jr.

This Committee shall have the responsibility:

(1) To recommend to the Mobile County School Board and the Court ways to maintain a unitary system.

(2) To review the operation of the majority to minority transfer rule and the transportation system.

(3) To assist the Mobile County School Board in presenting to the Court problems encountered by the Board in the operation of its desegregation plan heretofore or hereafter modified and approved by this Court or the Court of Appeals for the Fifth Circuit.

(4) To consider the selection of school sites and suggest other special assignments as the Court may direct.

The Committee is authorized to make recommendations to the School Board and the Court in connection with these activities. The Chairman is to alternate annually between the races. Mr. Beverly R. Wilson, Jr. is appointed Chairman for the ensuing twelve months.

DONE at Mobile, Alabama, this the 12th day of August 1970.

DANIEL H. THOMAS,
United States District Judge.

In the United States District Court for the Southern District of Alabama, Southern Division

Civil Action No. 3003–63

BIRDIE MAE DAVIS, ET AL, PLAINTIFF, AND UNITED STATES OF AMERICA BY RAMSEY CLARK, ATTORNEY GENERAL, ETC., PLAINTIFF-INTERVENOR

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL, DEFENDANTS, AND TWILA FRAZIER, ET AL, INTERVENORS

ORDER

Pursuant to the Order of the United States Court of Appeals for the Fifth Circuit of August 4, 1970, in this case, the Order of this Court of July 13, 1970, as amended July 30, 1970, is *further amended* so that the elementary schools known as Robbins and Hamilton are to be paired.

DONE at Mobile, Alabama, this the 12th day of August 1970.

DANIEL H. THOMAS,
United States District Judge.

U.S. GOVERNMENT PRINTING OFFICE: 1970

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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. 436

BIRDIE MAE DAVIS, *et al.*,

Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

October Term, 1970

No. 436

BIRDIE MAE DAVIS, *et al.*,

Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

Opinions Below

The opinions and orders of the courts below are as follows:

1. Order of the district court filed April 25, 1963, reported at 8 Race Rel. L. Rep. 480.

2. Opinion of the court of appeals dismissing the appeal, filed May 24, 1963, reported at 318 F.2d 63.

3. Opinion and order of the district court filed June 24, 1963, reported at 219 F. Supp. 542.

4. Opinion of the court of appeals issuing an injunction pending appeal July 9, 1963, and denying rehearing July 18, 1963, reported at 322 F.2d 356.[1]

5. Order of the district court filed July 26, 1963, reported at 8 Race Rel. L. Rep. 901.

6. Order of the district court filed August 23, 1963, reported at 8 Race Rel. L. Rep. 907.

7. Opinion of the court of appeals filed June 18, 1964, reported at 333 F.2d 53.[2]

8. Order of the district court issued June 29, 1964, reported at 9 Race Rel. L. Rep. 1177.

9. Order of the district court issued July 31, 1964, reported at 9 Race Rel. L. Rep. 1179.

10. Opinion and order of the district court issued March 31, 1965, reported at 10 Race Rel. L. Rep. 1016.

11. Opinion of the court of appeals filed August 16, 1966, reported at 364 F.2d 896.

12. Opinion and order of the district court filed October 13, 1967, reported at 12 Race Rel. L. Rep. 1820.

13. Opinion of the court of appeals filed March 12, 1968, as modified on denial of rehearing, April 26, 1968, reported at 393 F.2d 690.

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[1] Stay denied, 84 S.Ct. 10, 11 L.Ed.2d 26 (1963) (Mr. Justice Black, in Chambers); cert. denied, 375 U.S. 894 (1963).

[2] Cert. denied, 85 S.Ct. 85 (1964).

14. Opinion and order of the district court filed July 29, 1968, unreported.

15. Order of the district court filed August 2, 1968, unreported.

16. Order of the district court filed December 20, 1968, unreported.

17. Order of the district court filed March 14, 1969, unreported.

18. Order of the court of appeals denying injunction pending appeal, filed March 20, 1969, unreported.

19. Order of the district court filed April 7, 1969, unreported.

20. Order of the court of appeals granting reconsideration and issuing injunction pending appeal, filed May 6, 1969, unreported.

21. Opinion of the court of appeals filed June 3, 1969, reported at 414 F.2d 609.

22. Opinion and order of the district court filed August 1, 1969, unreported.

23. Opinion of the court of appeals filed December 1, 1969, reported at 419 F.2d 1211.

24. District court order of January 28, 1970, unreported.

25. Opinion and order of the district court filed January 31, 1970, unreported.

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34. Opinion of the court of appeals filed June 8, 1970, not yet reported.

35. Judgment of the court of appeals issued June 8, 1970.

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38. Opinion-order of the district court filed July 13, 1970, unreported.

39. Opinion-order of the district court issued July 30, 1970, unreported.

40. Opinion of the court of appeals issued August 4, 1970, not yet reported.

41. Judgment of the court of appeals issued August 4, 1970, recalling the judgment issued June 8, 1970, and substituting therefor.

42. Opinion-order of the court of appeals issued August 28, 1970, not yet reported.

43. Orders of the district court filed September 4, 1970, unreported.

Jurisdiction

The judgment of the court of appeals was entered on June 8, 1970. Additional orders supplementing the mandate were entered August 4, 1970, and August 28, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The petition for a writ of certiorari was filed in this Court on July 23, 1970. August 31, 1970, the Chief Justice entered an order setting a briefing schedule and argument date, and deferring action on the petition.

Constitutional Provision Involved

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Questions Presented

Upon request from the courts below, the United States Department of Health, Education, and Welfare developed several plans to desegregate public schools in Mobile County, Alabama. One plan integrated each school in the system by establishing a number of school pairings and clusters which necessitate the incidental transportation of both black and white students. This technique of student assignment—the use of school attendance zones with non-contiguous parts and the transportation of students—had long been used in the Mobile school system to maintain segregated schools. In spite of this history and without any evidentiary hearing in the district court, the court of appeals rejected this H.E.W. plan and ordered the implementation of a plan which leaves 50% of the black elementary students in metropolitan Mobile in all-black schools. The rejection of the H.E.W. plan was based solely on the court's deference to a hypothetical "neighborhood school concept" which Mobile's history demonstrates it never had. Two questions are presented to this Court:

(1) Whether black students are denied the equal protion of the laws when in the name of a newly conceived "neighborhood school concept" they continue to be assigned to segregated black schools despite the availability of alternative methods of student assignment which would desegregate every school in the system and which are proved workable by the school board's past use of the same assignment techniques, and

(2) Whether petitioners are entitled to an evidentiary hearing in the district court prior to the approval of a final desegregation plan?

Statement

1. *A Brief Overview of the School System.*

Mobile has a combined rural and metropolitan school system serving the whole of Mobile County. It is the largest school system in Alabama. During the 1969-70 school year, 91 schools served 73,504 students, of whom 42,620, or 58%, were white and 30,884, or 42%, were black.[3]

Throughout the litigation to desegregate Mobile's schools, the rural and metropolitan portions of the system have been treated separately. Since September 1969, the rural portion of the system has been desegregated adequately and this brief concerns only the metropolitan area comprised of the contiguous cities of Mobile, Prichard and Chickasaw. Within the metropolitan area, 65 schools served 54,913 students during 1969-70, of whom 27,769, or 50.5%, were white and 27,144, or 49.5% were black.

In addition to the rural-metropolitan division, another division has more recently been advanced in this litigation. This newer division is between the eastern and western parts of the metropolitan area with Interstate Highway

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[3] The school board is under an order to submit reports to the district court and opposing counsel within one week after the beginning of every school year "showing the number of students by school, grade, and race, expected and actually enrolled at the schools in Mobile County." 393 F.2d at 699. The statistics cited in this brief overview are taken from the school board's last report which was filed on November 20, 1969, more than two months after it was due and only after petitioners and the United States moved to hold board officials in contempt. If the school board complies with the order this year and files reports within a week of the system's September 9, 1970, opening, the petitioners will be able to furnish the Court with current statistics. Most importantly, the school board report will indicate the actual results of the desegregation plan implemented by the courts below.

I-65 used as a north-south divider.[4] The western part is predominantly white with 17 schools serving 13,875 students during 1969-70, of whom 12,172, or 88%, were white and 1,703, or 12%, were black. These statistics reflect the concentration of a majority of Mobile's black citizens in a racial ghetto located in the northeastern part of the City.

The controversy which led to the inclusion of Mobile among the cases considered by this Court in *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970), concerned the decisions of the courts below to treat separately the predominantly white and majority black parts of metropolitan Mobile by permitting the formulation of separate plans for each and delaying the desegregation of the majority-black part until 1970-71. Now that this Court's mandates in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), and *Carter* v. *West Feliciana Parish School Board, supra,* have precluded any further delays by making clear that desegregation must be accomplished "now" the school board and the courts below have justified the continued segregated education of at least 50% of the black elementary school students living in metropolitan Mobile by continuing to insulate the predominantly white portions of metropolitan Mobile from participation in a system-wide plan of desegregation through the adoption of a "neighborhood school concept."

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[4] I-65 is a federally aided highway which for a considerable extent of its route through Mobile acts as the dividing line between black and white residential areas; it was constructed during the 1960's.

2. *Summary of Proceedings in the Courts Below.*

This action by black parents and students to desegregate Mobile County's public schools began in 1963.[5] The United States intervened in 1967 as a plaintiff pursuant to 42 U.S.C. § 2000h-2 and has participated in all stages of this litigation since that time. Successive groups of white parents intervened in 1968 and earlier this year to press for the adoption of freedom-of-choice plans. Neither group of white parents participated in the recent proceedings in the court of appeals nor responded to the petition for certiorari.

a. *March 1963—June 1969.*

The early years of this litigation were consumed by petitioners' efforts against strong resistance to *initiate* the desegregation process in Mobile. The first of the many appeals in this action concerned the district court's failure to rule on petitioners' motion in March, 1963, to begin inte-

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[5] The school board, although petitioned on several occasions by black citizens, did nothing to begin desegregation between 1954 and 1963. As Judge Tuttle subsequently stated:

> It must also be borne in mind that this school board ignored for nine years the requirement clearly stated in *Brown* that the school authorities have the primary responsibility for solving this constitutional problem.

Davis v. *Board of School Commissioners of Mobile County*, 364 F.2d 896, 898, n. 1 (5th Cir. 1966) (67a). The delay in initiating desegregation has been further compounded by the painfully slow progress of this litigation. In a recent opinion in a collateral proceeding Judge Goldberg observed:

> For almost a decade there have been judicial efforts to desegregate the schools of Mobile County, Alabama. We do not tarry now to count the many appeals to this court in furtherance of this hope, for we are concerned today with only a single recent episode in this almost Homeric Odyssey. We wonder when the epilogue will be written.

Davis v. *Board of School Commissioners of Mobile County*, 422 F.2d 1139, 1140 (5th Cir. 1970) (611a).

gration in the 1963-64 school year. The court of appeals denied relief while instructing the district court that Mobile's schools were unlawfully segregated and that it was under a duty to rule promptly on petitioners' motion. *Davis* v. *Board of School Commissioners of Mobile County*, 318 F.2d 63-64 (5th Cir. 1963) (3a). After the district court did rule by postponing any relief until the 1964-65 school year, petitioners appealed and the court of appeals ordered the school board to start desegregation by enrolling without discrimination only those first grade students, and other students moving into the county for the first time, who satisfied the stringent requirements of the Alabama Pupil Placement Law. *Davis* v. *Board of School Commissioners of Mobile County*, 322 F.2d 356, *amended in part on rehearing*, 322 F.2d 359 (5th Cir. 1963) (14a), *stay denied*, 11 L.Ed.2d 26 (Mr. Justice Black, Circuit Justice), *cert. denied*, 375 U.S. 894 (1963), *rehearing denied*, 376 U.S. 928 (1964). On remand the district court ordered the implementation of a plan which was limited to high school seniors and excluded first grade elementary students. Another appeal followed immediately and the court of appeals ordered the implementation of the assignment and transfer provisions of the Alabama Pupil Placement Law at a rate faster than one grade a year and required the abolition of Mobile's dual attendance zones as the plan affected each additional grade. *Davis* v. *Board of School Commissioners of Mobile County*, 333 F.2d 53 (5th Cir. 1964) (36a), *cert. denied*, 379 U.S. 844 (1964).

In response to the orders to abolish dual attendance zones Mobile devised an assignment plan which the court of appeals in a fourth appeal struck down as effectively perpetuating the effects, if not the form, of the dual system. First, attendance zones were drawn which conformed generally with the racial character of neighborhoods and assignments

from elementary schools to junior high schools and then to senior high schools were determined on a racial basis. *Davis* v. *Board of School Commissioners of Mobile County*, 364 F.2d 896, 900 (5th Cir. 1966) (67a). Then, students "were given the option of attending the school of their 'area' (unmistakingly identifiable as either a Negro or white 'area') or the nearest school, outside the area, *formerly* predominantly of the race" (*id.* at 903), a device which the court of appeals found was plainly designed to permit white students living in a black area to transfer to white schools and "a plain violation of the oft-repeated requirement that dual school zones must be abolished" (*ibid.*). As a result, the court of appeals found that "less than two-tenths of one percent of the Negro children in the system are attending white schools" and concluded "there is no true substance in the alleged desegregation" (*id.* at 901).

The school board then responded by drawing new boundary lines for some metropolitan attendance areas but still, rather than actually assigning students to schools serving their attendance area, offering options to students to attend either the school serving his attendance zone or the nearest "formerly" white or black school. Although little additional desegregation occurred (only 692, or 2%, of Mobile's black students attended white schools), the district court approved the school board's plan and petitioners appealed for the fifth time. The court of appeals found that the results of the board's plan "make inescapable the inference that discrimination yet exists." *Davis* v. *Board of School Commissioners of Mobile County*, 393 F.2d 690, 693 (5th Cir. 1968) (122a). Addressing itself solely to schools in metropolitan Mobile, the court of appeals rejected the school board's zones and ordered the redrawing of attendance areas "according to strictly objective criteria

with the caveat that a conscious effort should be made to move boundary lines and change feeder patterns which tend to preserve segregation." *Davis* v. *Board of School Commissioners of Mobile County,* 393 F.2d 690, 694 (5th Cir. 1968) (122a). The court of appeals further ordered that following the revision of attendance zones all students should be required to attend the school serving their zone in the absence of a compelling non-racial reason (*id.* at 697). In the rural portion of the system the court of appeals allowed the board to use a freedom-of-choice plan (*id.* at 695).

Once again a remand to the district court failed to result in an adequate desegregation plan. Three appeals were taken from orders of the district court (the sixth, seventh and eighth in this litigation), consolidated by the court of appeals, and decided on June 3, 1969. *Davis* v. *Board of School Commissioners of Mobile County,* 414 F.2d 609 (5th Cir. 1969) (186a). The current phase of this case began with this decision.

b. *June 1969—June 1970.*

The main issue before the court of appeals in June 1969 was whether the school board and the district court had complied with the previous decision of the court of appeals in establishing school attendance zones for elementary and junior high schools, and maintaining freedom of choice for high school students in metropolitan Mobile. A second issue was retention of freedom of choice for all students in rural Mobile County. The court of appeals found that the district court had "ignored the unequivocal directive to make a conscious effort in locating attendance zones to desegregate and eliminate past segregation." 414 F.2d at 610. Freedom of choice in metropolitan high schools and all rural schools, where only 6% of all black

students attended white schools, was also held to be unacceptable. Accordingly, the court of appeals ordered the prompt formulation of a plan "to fully and affirmatively desegregate all public schools in Mobile County, urban and rural . . ." and directed the district court to request the Office of Education, of the United States Department of Health, Education, and Welfare to collaborate with the school board and submit its own desegregation plan if agreement with the board was not possible (*ibid.*).

The original plan of the team of educators organized by H.E.W.,[6] consistent with the court of appeals' directions, placed the initiative with the school board. The board was asked to develop a plan which would be jointly reviewed by the H.E.W. team and school officials to determine whether amendments could be made to increase desegregation by changing zone lines, pairing schools, and re-

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[6] Four educators were involved in the preparation of H.E.W. recommendations: Mr. Jesse Jordan, the Senior Program Officer in the Atlanta Regional Office of the Equal Educational Opportunities Division of the United States Office of Education represented the Department of Health, Education and Welfare. Prior to joining H.E.W. Mr. Jordan had been a teacher, principal, and Assistant Superintendent of Schools in Cobb County, Georgia. The actual study of Mobile was undertaken by Dr. Joe Hall, a Visiting Professor of Education at the University of Miami and Assistant Director of the Florida School Desegregation Consulting Center. The desegregation center is located at the University of Miami and financed under Title IV of the Civil Rights Act of 1964. Prior to joining the desegregation center, Dr. Hall served eleven years as Superintendent of Schools for Dade County (Miami), Florida. Dr. Hall also has been employed as a teacher and principal in Carrabelle and Leon County, Florida, Director of the Division of Instruction in the Florida State Department of Education, and Director of Instruction, Assistant Superintendent for Instruction and Associate Superintendent of Instruction in Dade County, Florida (362a). Dr. Hall was assisted by Dr. Michael Stolee, Director of the Florida School Desegregation Consulting Center, and Dr. Larry Weinkoff of the University of South Carolina.

structuring grades (396a).[7] School officials did develop plans for both rural and metropolitan schools. However, after joining the H.E.W. team in a review of the rural plan school officials severed working relationships with H.E.W. and obliged the H.E.W. team to prepare its own recommendations (440a).

In the absence of agreement with the school board, H.E.W. submitted its own county-wide desegregation plan on July 10, 1969.[8] The plan provided for zoning all schools

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[7] The school board took the depositions of Dr. Hall and Mr. Jordan on July 15 and 16, 1969, after H.E.W. submitted its report to the district court on July 10, 1969. The depositions were filed in the district court on July 23, 1969, but in the absence of any evidentiary hearing on H.E.W.'s plan were never moved into evidence. Apart from subsequent self-serving affidavits prepared by Mobile's Associate Superintendent of Schools, James A. McPherson, these depositions are the only testimony concerning the preparation of H.E.W.'s July 10, 1969 plan. An effort by the United States to depose William B. Crane, president of the Mobile School Board and Associate Superintendent McPherson was blocked when the district court granted the school board's motion that these depositions not be taken (Docket Sheet No. 12).

[8] The failure of the school board to cooperate with H.E.W. in preparing a plan for metropolitan Mobile inevitably meant that there would be inaccuracies in H.E.W.'s recommendations. Dr. Hall described the July 10, 1969, report as a "basic concept" (413a) in which "adjustments" would be necessary (412a). Among the reasons why complete accuracy was not possible was that the school board never amended the statistical information furnished by it to the district court in 1968 pursuant to an order of the court of appeals, 393 F.2d at 698. Aware of this fact, Dr. Hall specifically invited the school board to correct H.E.W.'s work. In a colloquy with the school board's attorney, Dr. Hall said: "If you or the members of the school system found some error, I think you would have an obligation to tell us." The school board attorney responded: "I am sure we would if we did" (439a). The district court reiterated H.E.W.'s invitation to the school board: "H.E.W. readily acknowledges that this plan is not perfect and invites the school board to suggest improvements". Yet, in spite of the fact that this invitation was ignored, the school board has continued to cite inaccuracies in H.E.W.'s recommendations. Subsequently, the court of appeals noted the school board's failure to cooperate in response to the board's claim that H.E.W. was inaccurate: "The defendants warn

in rural and metropolitan Mobile (some schools would be paired within zones), closing four black schools in eastern Mobile, and transporting 2,000 black students from the closed schools to white schools in the western and southern parts of the metropolitan area. The plan failed in two respects to adequately desegregate Mobile's schools: (1) it retained five large all-black elementary schools serving 5,500 students because H.E.W. was unwilling to recommend the transportation of white students in addition to the transportation of black students; and (2) the plan deferred desegregation in eastern metropolitan Mobile, where 85% of the system's black students live, until 1970-71.

The retention of all-black schools in H.E.W.'s plan was explained by H.E.W. in terms of its uncertainty whether "assignments legally are required to be in the desegregation plan if they require substantial additional transportation," an issue which H.E.W. considered to be "a legal question which we can only leave to the parties and to the court" (329a). In reality, however, H.E.W. was less concerned about the legality of transportation generally than it was about the transportation of white students.

As an educational matter, Dr. Joe Hall, who was principally in charge of preparing H.E.W.'s recommendations, stated that while he always felt that it was better to have less than more busing, he "always recognized that you had to have busing in order to operate schools to get groups of people together for educational purposes" (369a), that "in our society today it is good for whites and

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that the figures used by the Department of Justice and H.E.W. are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district court".

blacks to have associational experiences in a school situation with each other" (371a), and "if it takes some bussing to achieve that, I would say it would be to the advantage of all the children concerned" (372a). Concerning the competing value of neighborhood schools, Dr. Hall held the view that while as a "general proposition" he would not favor assigning children to schools outside their neighborhoods, he did favor such assignments "as a specific proposition to achieve desegregation" (379a). He noted that "all of us in education have been brought up with the idea that the neighborhood school was a good idea, and that the community and the school should work together as a total situation (but) again I have undergone some change in my thinking because in your metropolitan areas your neighborhoods break down and you just don't have the neighborhood any more even though you have a group of people that live close together" (379a-380a).[9]

However, in applying these views, Dr. Hall only recommended the transportation of black students to available spaces in white schools. As for the transportation of both white and black students, Dr. Hall stated that "at this *point* in our educational philosophy we have not been willing to go to the cross-bussing idea" (448a) (emphasis added). In his view "cross-bussing doesn't have the financial support or the legal support or the community support *unless something in this case decides that it does the legal support*" (449a) (emphasis added). Of all

[9] Mr. Jordan, in his deposition, expressed the view that it is desirable to assign students to schools outside their neighborhoods "if they obtain (a) better education where they are being transferred to. . . . I think it's better to take (students) to the point where they can get the better education. Now, firmly believing, based on research, that desegregated education is superior to segregated education, if a community school results in segregated education, then I think that is bad education" (477a).

these factors, it was the legal question to which Dr. Hall would return. Speaking of the problem of desegregating the remaining all-black schools he said: "[W]e could not figure out a way to do that without getting into the problem of cross-bussing and we didn't have a legal decision yet on busses" (452a). The "long-range" solution which Dr. Hall envisaged was the construction of new schools in integrated areas. For the present, in response to the question whether students in all-black schools "will then continue to suffer as those in the past for the lack of better educational opportunities," Dr. Hall testified: "That's right, and the only recommendation, the only part (sic) I can say at all to justify that is . . . that the school system ought to make a strong effort there for other aspects of compensatory education, which I said I didn't think were as effective as integration" (453a-454a).

Petitioners moved for an order implementing the H.E.W. plan with amendments requiring the desegregation of the five remaining all-black elementary schools and the immediate implementation of a plan throughout all of Mobile. The United States moved for an order requiring the implementation of the H.E.W. plan without modifications, and the school board moved to strike and expunge the H.E.W. plan from the record but, in the words of the district court, "filed absolutely no plan for the assistance of the court".

The directions of the court of appeals required that "[f]or plans as to which objections are made or amendments suggested or which in any event the District Court will not approve without hearing, the District Court *shall commence hearings* beginning no later than ten days after the time for filing objections has expired." 414 F.2d at 611 (emphasis added). Nevertheless, in spite of petitioners' timely objections, the district court, without an evidentiary

hearing, denied petitioners' motion on August 1, 1969.[10] The district court's order provided only for the implementation of H.E.W.'s plan for rural and western metropolitan Mobile as modified by the court to eliminate the H.E.W. proposal to transport 2,000 black students in northeastern metropolitan Mobile to white schools in western and southeastern metropolitan Mobile. The order also accepted H.E.W.'s plan to defer desegregation in eastern metropolitan Mobile until 1970-71. Moreover, without the benefit of evidence, and without offering any elaboration, the district court rejected H.E.W.'s deferred plan for eastern metropolitan Mobile by finding that the plan "contains some provisions which I think are both impractical and educationally unsound". The district court accordingly ordered the school board to file a desegregation plan by December 1, 1969, and directed further collaboration with H.E.W.

Petitioners appealed the delay, the court of appeals affirmed,[11] Mr. Justice Black ordered the school board to prepare for desegregation by February 1, 1970,[12] and this Court reversed the delay.[13] The case returned to the district court in late January 1970 for second semester implementation of a plan to complete the desegregation of Mobile's schools.

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[10] The district court did hold an *ex parte* conference with the school board and H.E.W. officials on July 3, 1969. Petitioners' attorneys had no notice of the meeting and were not present. The meeting was acknowledged by the school board's attorney in his motion to Mr. Justice Black in July 1969 seeking a stay of the court of appeals' June 3, 1969, decision.

[11] *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970).

[12] 38 U.S.L.W. 3220 (1969).

[13] *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970).

In the meanwhile, H.E.W. had submitted two additional plans to the district court on December 1, 1969.[14] Using the July 10, 1969 plan as a base (and labeling it Plan B), H.E.W. proposed one modification (Plan B Alternative) which totally eliminated the transportation of students by continuing in operation the four black schools which the July 1969 plan closed. Plan B Alternative would leave nine all-black schools serving 7,971 students. The second modification (Plan B-1 Alternative) recommended closing two black schools, and pairing or clustering all other black schools in eastern Mobile with white schools in western or southern Mobile. Transportation of both black and white students would be required and all schools in the system would be integrated.[15]

The same day the school board submitted its own plan for eastern Mobile. It assigned 18,832 black students to 21 all or nearly all-black schools.[16]

The district court called attorneys for all parties to a "pre-trial conference" in chambers on January 23, 1970 (603a). At the conference the following positions were taken: (1) petitioners contended that the elementary school provisions of H.E.W.'s Plan B-1 Alternative and the junior and senior high school provisions of H.E.W.'s Plan B should

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[14] The December 1, 1969, recommendations were prepared by Mr. Jordan's successor, Ernest E. Bunch, Acting Senior Program Officer in the Atlanta Regional Office, Equal Opportunities Division of the United States Office of Education.

[15] Plan B-1 Alternative involved only elementary schools. For junior and senior high schools it proposed to incorporate the provisions of Plan B.

[16] Petitioners, despite repeated requests, were not served with a copy of the board's plan and had to move on January 2, 1970, for an order compelling service which was not made until the district court granted the motion February 27, 1970.

be implemented forthwith, but if the transportation proposals made immediate relief impossible and the district court selected another plan *pendente lite*, then a hearing should be promptly set to determine a permanent plan; (2) the United States proposed that the H.E.W. plan involving no transportation (Plan B Alternative) be implemented *pendente lite* while discovery and hearings on a permanent plan proceeded; (3) the school board argued against any changes in its operations; and (4) the district court stated it would not consider the plans petitioners supported and that the school board's December 1, 1969, plan was unacceptable without modifications.

The district court concluded the conference by asking the school board for modifications of its December 1, 1969, plan and the United States "for [a] revision of the H.E.W. plan which the government thought should be followed for the remainder of the present school year" (*ibid.*). The school board failed to respond to the court's request.[17] The United States submitted a revision of H.E.W.'s no-transportation alternative (Plan B Alternative) "as a plan which could be implemented immediately to remain in effect only for the present school year." [18] Then, despite its own characterization of the January 23 conference as a

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[17] In its January 31, 1970, order, the district court commented on the board's failure:

> The school board and its staff of administrators and professional educators, who know the Mobile Public School System best, who have all the facts and figures which are absolutely necessary for a meaningful plan, have not assisted or aided the Court voluntarily. Consequently, the plan which is by this decree being ordered is not perfect. . . .

[18] Brief for the United States in the court of appeals, p. 22. The memorandum of the United States in this Court in response to the Petition for Certiorari reiterated the government's position that in the district court its plan had been proposed only for implementation "immediately, *pendente lite*, to remain in effect until the conclusion of the then-current school year" (p. 2, n. 1).

"pretrial conference" and both petitioners' and the United States' clearly stated position that plaintiffs sought only mid-year relief *pending* hearings on a permanent desegregation plan, the district court without an evidentiary hearing entered an order on January 31, 1970, which purported to finally disestablish the dual system in Mobile (603a).

Mindless of its expressed view at the January 23, 1970, conference that the board's proposals were unacceptable, the district court's order adopted the school board's December 1, 1969, plan with only several modifications. The order left 18,623 black students, or 60% of the system's black students, in 18 all- or nearly all-black schools (680). The court dismissed H.E.W.'s Plan B-1 Alternative, which would establish pairing and clusters of non-contiguous zones and require transportation of students, by making the general observation that it "would require busing of children from areas of the city to a different and unfamiliar area (603a) and by singling out one[19] of the sixteen H.E.W. proposed pairs or clusters, presumably to illustrate the court's conclusion that H.E.W.'s proposal was "motivated for the sole

[19] The one elementary arrangement which the court singled out involved three schools, two white and one black, in a cluster. All students in the cluster would attend one of the white schools for the first and second grades, the second white school for the third grade, and the black school for grades four through six. Of the remaining fifteen elementary school arrangements in H.E.W.'s Plan B-1 Alternative, only one other was similar. Eleven involved only two schools with all students attending either the black or white schools for two or three years and then attending the other school for the remaining elementary school grades. Three other arrangements involved three schools, but required attendance at only two schools. Under these arrangements all students in the cluster would attend one school for grades one and two and then divide, with one-half attending the second school in the cluster for grades three through five and the other half attending the third school for the same grades. Neither the simple pairing of two schools serving noncontiguous black and white zones nor this latter type of clustering were discussed by the district court.

purpose of achieving racial balance" (*ibid.*). Similarly, the court dismissed H.E.W.'s Plan B for junior high schools by citing but one atypical proposal to establish a cluster of three junior high schools, stating that in the court's view "the Supreme Court has not held that such drastic techniques are mandatory for the sole purpose of achieving racial balance" (*ibid.*).

Petitioners, the United States, and the school board, appealed. Petitioners challenged both the failure of the district court to conduct an evidentiary hearing before ordering a final plan and the court's failure to require the school board to implement H.E.W.'s plan to establish noncontiguous pairings and clustering and transport both black and white students to achieve complete desegregation. The United States, while acknowledging that "if the past practices of the school board can be relied upon as a guide, they suggest that implementation of any of these plans would be feasible," asked the court of appeals to require the implementation of H.E.W.'s sole no-transportation plan for the negative reason that "no argument can be made that Plan B Alternative, which is the most modest plan, is either educationally unsound or administratively unfeasible." [20] The school board, although cross appealing, sought affirmance of the district court's order.

The court of appeals, after remanding for further findings of fact,[21] decided the appeal on June 8, 1970. The court defined its judicial task in these words:

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[20] Brief for the United States in the Court of Appeals, p. 47.

[21] The remand was required by the district court's failure to determine how the school board's plan, which it adopted, would affect the racial composition of any of the system's schools. The remand also directed the district court to make findings on the extent of desegregation of faculty, transportation and extracurricular activities. Petitioners moved in the district court on April 6, 1970, to establish a procedure whereby after the board submitted

> We have examined each of the plans presented to the district court in an effort to determine which would go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept of the school system.

In the court's view the neighborhood assignment system allows two alternatives. One alternative requires the assignment of each student to the school nearest his home with such assignments limited only by the capacity of the schools. *Ellis* v. *Board of Public Instruction of Orange County, Florida,* 423 F.2d 203, 207 (5th Cir. 1970). The other alternative is the establishment of attendance zones "on a discretionary basis as distinguished from a strict neighborhood assignment . . . ." *Mannings* v. *Board of Public Instruction of Hillsborough County, Florida,* No. 28643 (5th Cir., May 11, 1970) (Slip Op., p. 6). Mobile, the court concluded, had itself chosen not to use "the strict neighborhood assignment system" but instead uses "discretionary zone lines" (Court of Appeals, June 8, 1970). As Mobile had made that decision for itself the court ruled that the desegregation plan "can be greatly improved by pairing some schools located in proximity to each other . . . [and] also be improved by recasting the grade structure in some of the buildings, but, at the same time, maintaining the neighborhood school concept" (*ibid.*).

The plan which found favor with the court was the plan submitted by the United States as a modification of H.E.W.'s no-transportation Plan B Alternative. The plan

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proposed findings of fact an evidentiary hearing would be held. The school board submitted an affidavit which the district court accepted *in toto* "excluding self-serving declarations and speculative opinions." Order of April 14, 1970. Petitioners' motion for a hearing was denied the same day.

left 8,515 black students in all- or nearly all-black schools (*ibid.*). The court required modifications of the plan to reduce the number of black students in all-black schools to 7,725 students in 8 elementary schools, which it noted amounted to 25% of Mobile's black students being assigned to all-black schools (*ibid.*). In terms of elementary school students in metropolitan Mobile, the plan resulted in the assignment of 58% of black elementary school students to all-black schools.

These results were justified by the court in four ways: (1) "every Negro child would attend an integrated school at some time during his education career"; (2) "the all Negro student body schools which will be left after the implementation of the Department of Justice plan, as modified, are the result of neighborhood patterns"; (3) the remaining segregation can be "alleviated" through a policy allowing black students to transfer to white schools with transportation provided; and (4) the situation may be further alleviated by the establishment of a bi-racial committee to serve in an "advisory capacity" to the school board (*Ibid.*).

c. *June 1970—August 1970*

The court of appeals remanded the case to the district court with instructions to implement a new plan by July 1, 1970. On remand the district court on June 12, 1970 ordered the implementation of the plans submitted by the United States except for amendments to two school districts which the court announced it would make.

Then, on July 13, 1970, with neither notice to petitioners that revisions in attendance areas were being considered nor an evidentiary hearing, the district court issued an order establishing new attendance zones for metropolitan Mobile. The order recited as its authority a provision in

the court of appeals June 8, 1970 decision that the district court may make adjustments based on current demographic information possessed by the school board (699a). However, there is no indication that the school board officially furnished any such demographic data to the district court; at least no new demographic information has ever been served by the school board on petitioners.[22] Two weeks later, on July 27, 1969, information showing projected enrollments by race at each metropolitan school under the district court's July 13, 1970 plan was filed in the Clerk's office, presumably by the district judge although the origin of the information is unclear and its accuracy unverified (Docket Sheet No. 16). The projections revealed extensive changes between the plan approved by the court of appeals on June 8, 1970, and the plan ordered by the district court. The district court also dissolved three proposed school pairings and closed one black school. Petitioners and the United States appealed.

On August 4, 1970, the court of appeals affirmed the district court's entire revision of its June 8, 1970 decision with the exception of the district court's dissolution of one elementary school pairing which the court of appeals again ordered paired (704a). Relying on the statistics furnished

[22] The court of appeals when it first ordered the school board to redraw its attendance zones required the board to undertake a survey of the school system and, *inter alia*, prepare maps showing the location, by race and grade, of each student in the school system during the 1967-68 school year. 393 F.2d at 698. Accordingly, pupil locator maps were not only filed but also provided to petitioners and the United States. The purpose of the pupil locator maps and other survey information was to provide to the district court and the parties evidence to test the racial consequences of any new attendance zones established by the board. 393 F.2d at 693-94. If new information on residential patterns was used by the district court to establish new attendance zones then that new information should have been furnished to allow petitioners to assess the consequences of any such revisions.

by the district court, which as noted above were unverified, the court of appeals concluded that the district court's amendments as modified by the court of appeals would reduce the number of all-black schools to 6, and the number of black students attending these schools to 5,310, or 17% of all black students in Mobile County and consequently constituted an "improved result". However, this conclusion is marred by the fact that the district court's order unaccountably fails to assign 1,740 black students to any schools.[23] Nevertheless, it still appears that at least 50% of black elementary students in metropolitan Mobile have been assigned to all-black schools.[24]

In order to allow this Court to consider its August 4, 1970 decision to be "the final order on this appeal for mandate and certiorari purposes" the court of appeals recalled and amended the mandate issued after its June 8, 1970 decision (704a). However, the court of appeals acted without knowing that several days earlier, on July 30, 1970, the district court had once again, without a hearing, established new zone lines to govern attendance in metropolitan Mobile. The district court's order explained two zone line changes, stated that since the July 13, 1970 order the school board had suggested certain changes (petitioners were never notified that zone changes had been proposed by the

[23] The last attendance report filed by the school board shows 25,441 black students attending schools in metropolitan Mobile. The district court plan approved by the court of appeals assigns only 23,701 black students to metropolitan schools. This inaccuracy underscores the need for evidentiary hearings prior to the entry of orders governing a school system as complex as Mobile. If the board's reports for the current year show that these black students reappear at all-black schools, then the improvement found by the court of appeals will prove illusory.

[24] Petitioners' calculations from the data in the court of appeals August 4th opinion show 5,351 black students assigned to all-black elementary schools out of a total black metropolitan elementary school population of 10,648.

school board and indeed no amendments were ever filed by the board), and found that "some changes" should be made but that "these changes in the court's opinion have no racial significance" (702a). No statistical projections of the effects of these zone line changes were filed until three weeks later, on August 20, 1970, when the district court filed projections which again were unverified (Docket Sheet No. 17).

Petitioners appealed for the thirteenth time in the history of this litigation, Judge Bell conducted a pre-hearing conference with counsel, and on August 28, 1970, the court of appeals "terminated" the appeal. Rather than merely "some changes," the court of appeals found that "the July 30, 1970 order makes change in the attendance zones of 32 separate schools" (720a). The court further found that while "some of the changes had no effect from the standpoint of desegregation [o]thers diminished the degree of desegregation accomplished in the prior orders of this Court and the district court." The court rejected the district court's new junior and senior high school zones and accepted the district court's elementary school zones while requiring some modifications (*ibid.*). The record does not show what the effect of the modifications will be on the extent of desegregation. Finally, the court of appeals, responding to the problems caused by the continuing *ex parte* dealings between the school board and district court ruled that "henceforth, any time the school board desires to have changes in zone lines, it shall give reasonable notice to the parties" (*ibid.*).

3. *The Techniques of Segregation.*

Although the district court has not permitted any evidentiary hearings on a desegregation plan since the summer of 1968, the record of the extensive hearing that

summer and in previous years fully documents the various techniques used by the school board to racially segregate Mobile's schools.[25]

Prior to the initiation of this litigation in 1963 the Mobile School Board had no need for the great variety of assignment techniques subsequently used to maintain segregated schools simply because segregation was easily achieved through the maintenance of dual attendance zones, one for whites and the other for blacks. Since 1963 the school board has achieved the same result (1) by establishing racially defined attendance zones, increasing or decreasing the capacity of schools or the grades served by schools to commensurately increase or decrease the areas served by schools in accordance with the racial character of residential patterns, and closing or constructing schools to serve predetermined racial groups, and (2) by providing procedures for optional assignments to assure that those few students who were "unavoidably" assigned to schools serving a different race would continue to attend the schools serving their race.

An examination of these assignment techniques overwhelmingly demonstrates that Mobile's passing acknowledgements of a "neighborhood school concept" have never in reality governed the way in which children are assigned

[25] The first hearings in this litigation were held in 1963 and are incorporated in the record before the Court of Appeals in No. 20,657 (333 F.2d 356). The next hearings were held in 1965 and are reproduced in the record before the Court of Appeals in No. 22,759 (364 F.2d 896). Hearings held during 1967 and 1968 are reproduced in a combined record before the Court of Appeals in No. 26,886 (393 F.2d 690 and 414 F.2d 609). Additional 1968 hearings limited to school construction problems are reproduced in the record before the Court of Appeals in Nos. 27,491—27,260 (414 F.2d 609). The record in this Court includes the records in each of these former proceedings in the Court of Appeals except the 1963 case No. 20,657.

to schools. To be sure, the rhetoric of neighborhood schools has periodically appeared in this litigation. However, the meaning of the neighborhood school as an organizing device has never been clear. In 1965, the Associate Superintendent of Schools, James A. McPherson, in response to a motion by petitioners stated that while the board "considers the neighborhood elementary school . . . to be the desirable organizational pattern where it is practicable to achieve . . . the neighborhood school should not be misconstrued to necessarily mean the school nearest a pupil's residence" (R. 22,759, pp. 25-26).[26] Instead, as conceived by the school board, neighborhoods are the product of not only physical but also sociological factors.

> There are many factors that determine a natural neighborhood. These include natural and physical barriers, for example, traffic thoroughfares, railroads and drainage canals, housing developments; and neighborhood agencies and institutions such as churches, playgrounds, etc.; all of which tend to promote cohesiveness between and among families (Ibid.)

But three years later, Cranford Burns, Mobile's Superintendent of Schools, testified that the school board had not instructed personnel in charge of establishing atten-

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[26] The school board had stated at the outset of this litigation its opposition to any rule requiring the assignment of students on the basis of proximity to schools or by free choice. In its first plan submitted pursuant to an order of the district court in 1963 the board stated:

> D. The Board considers that any general or arbitrary reassignment of pupils presently in attendance at the 89 existing schools, according to any rigid rule of proximity to schools or solely by request on the part of the parents of pupils, would be impractical and a disservice to the system. . . . (R. 22,759, p. 2).

dance zones how to define neighborhoods. Further when asked:

> Q. Is there a workable definition or a standard definition which the school board has used to define neighborhoods as such?

Superintendent Burns responded:

> A. Not unless it would be something very informal indeed that neighborhoods—We look upon neighborhoods in two different ways. You can create a neighborhood on a map in terms of geographic and natural barriers and that, but it's mighty, mighty, hard to identify a neighborhood sociologically and otherwise because that has to do with factors not fully understood and involves information we do not always have at our command, plus the fact that neighborhoods are constantly changing both psychologically and geographically and this makes the problem of organizing the School System very complex indeed (R. 26,886, Vol. IV, pp. 1081-82).

Moreover, no matter what values the Mobile School Board has attributed to the neighborhood school concept it has never been advanced as the determinative basis for student assignment when race has been the issue. Rather than through the abstraction of the "neighborhood school concept" assignments in Mobile have been determined by a combination of decisions concerning attendance zones, grade structures, assignment of portable classrooms, transportation of students, and the closing and construction of schools.[27]

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[27] This portion of the brief is in large part a summary of a longer analysis of these techniques contained in the Brief for the

a. *Attendance Zones.* The most straightforward way in which the school board determines student assignments is through the establishment of attendance zones. On four separate occasions the court of appeals has faulted zone lines established by the school board. In 1966 the court of appeals noted "the school superintendent testified (as was obvious to any who studied neighborhood patterns) that it was 'generally true than the actual make-up of the school district [sometimes called 'area'] tends to conform with the race of the school within that district'." 364 F.2d at 900. In 1968, the court of appeals found the school board's rebuttal "somewhat unpersuasive" to petitioners' charge that racial factors determined zone lines. 393 F.2d at 694, n. 3. Again, in 1969, the court of appeals found "that the attendance zones formulated by the district court are constitutionally insufficient and unacceptable. . . ." 414 F.2d at 610. Zones established by the school board and the district court were again rejected by the court of appeals in the recent proceedings below.

In addition to racially identifiable attendance zones, the splitting of school attendance zone (i.e., non-contiguous zones) has been a common method of school assignment in Mobile. As many as nineteen non-contiguous or split zones were used in one year, 1964-65, including one split zone in which the parts were separated by over 11 miles (Brief Appendix, App. C). This non-contiguous zoning involved both the combination of rural and metropolitan zones as well as two or more non-contiguous zones in metropolitan

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United States in the Court of Appeals, pp. 4-18, and Appendices B, C and D to that brief. The analysis contained in the United States' brief is, in petitioners' view, an accurate and extremely helpful compilation of facts concerning the board's past practices and for this reason is appended to this brief and will hereinafter be cited as Brief Appendix, ——.

Mobile.[28] The board's non-contiguous zoning invariably linked only racially similar areas. Transportation between split zones was provided by the school board (R. 26,886, Vol. I, pp. 5-6).

b. *Transportation.* The use of buses to transport students to school has long been a practice in Mobile. During 1967-68 (the last year for which the record shows these facts) the Mobile School Board used 207 buses to transport 22,094 students daily for an average round trip of 31 miles spending $480,156 or $21.73 per each student transported. (HEW Report, July 10, 1969, p. 61) A summary of the extent to which transportation has been used to facilitate student assignments in Mobile is contained in the following chart prepared by H.E.W.:

[28] Maps illustrating some of the board's non-contiguous zones are included in the Brief Appendix, p. 7a.

CURRENT OPERATIONAL COSTS OF TRANSPORTATION

Year	*Transportation Total Expenditure*	*Enrollment of all Transported*	*Per Transported Pupil Enrolled Per Year*	*Number of Buses*	*Seating Capacity Average*	*Total miles Traveled for Year*	*Length of Round trip in Miles*
1964-65	$405,833	24,972	$16.25	218	59	1,271,585	31
1965-66	414,192	24,101	17.18	203	59	1,209,608	33
1966-67	503,934	22,218	22.68	229	59	1,221,207	32
1967-68	480,156.75	22,094	21.73	207	59	1,188,204	31

Four Year Average Cost Per Transported Pupil Enrolled $19.46

Each New Bus 1st Year $6,648.14—6,948.14

Each Year for Next 8 Years at $1,148.14 plus increases in cost which cannot be calculated

For an average seating capacity of 59, the average operational cost equals $1,148.14

Cost of New Bus $5500—5800
(State Purchase)

TABLE 3-7

H.E.W. Report, July 10, 1969, p. 61:

This extensive use of busing has not been limited to the rural parts of the school system. During 1966-67 the school board bused 7,116 students daily in the metropolitan area. Approximately 2,350 of these students were bused because of non-contiguous zoning (R. 26,886, Vol. I, pp. 5-6). A considerable amount of busing was designed to maintain segregation. As an example, 582 black students were bused over 6 miles from rural Saraland and Satsuma to a black school in metropolitan Mobile to prevent integration at white schools in their communities (*Ibid.*). Similarly, 331 black elementary and junior high school students were transported from the Austin attendance area in the City of Mobile, which was served by a white school, to two black schools, Warren Elementary School and Booker T. Washington Junior High School, also located in the City of Mobile (*Ibid.*).[39]

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[39] In February 1967 the school board considered a proposal to transport students from the Russell Elementary School which the board had closed to the Leinkauf Elementary School, both in the City of Mobile. An assistant superintendent of schools reported to the school board the results of a survey to determine the board's practices in transporting students. His survey reported the use of busing to transport black students away from their "neighborhood" schools:

> "Set forth below is a summary of schools serving elementary children who have to travel at least as far or further than will the pupils formerly attending Russell. . . .
>
> III. Schools where elementary children are now furnished public school bus transportation from out-of-district attendance areas as approved by the Board.
>
> A. Warren-Negro pupils residing in the Austin area.
>
> B. Hillsdale-Negro students residing in the Semmes area.
>
> C. Hall-Negro pupils residing in the Kate Shepard area and Negro pupils residing in the South Brookley area."

(R. 26,886, pp. 24-25).

c. *Portable Classrooms and Grade Structures.* In addition to the way in which zones are established and the transportation of students, the school board has used portable classrooms and the grade structures of schools to relate the capacity of schools to selected racial neighborhoods. For example, the selective assignment of portable classrooms in order to expand the capacity of black schools as a way of avoiding the assignment of black students to under-utilized nearby white schools has been a method of maintaining segregated schools. The most striking examples of this practice have occurred in downtown Mobile. A school board study shows that between 1962 and 1967 residential movements decreased the number of white students attending white downtown schools from 14,128 to 9,897 while the number of black students attending black downtown schools increased from 13,022 to 15,120 (R. 26,886, Vol. VI, pp. 26-27). This led to overcrowded conditions in black schools which the school board responded to by assigning 39 portable classrooms to black schools instead of using 44 available empty classrooms in white schools (*id.* at 29).

Besides effecting the racial composition of schools through the selective assignment of portables or non-utilization of vacant classrooms, the Mobile School Board has also determined the grade structures of numbers of schools in order to effect the racial composition of these schools.

The Mobile school system has used an extraordinarily wide variety of grade structures, including schools serving grades 1-5, 1-6, 1-7, 1-8, 1-9, 1-12, 2-5, 6-7, 6-8, 6-9, 6-10, 6-12, 7, 7-8, 7-9, 7-11, 7-12, 8-12, 9-12, 10-11, 10-12. A school which serves a small number of grades may house more students in each grade than the same school serving a large number of grades. Consequently, the smaller the number

of grades served, the larger the attendance area served by the school may be. By selectively decreasing or increasing the number of grades served at particular schools, the school board has increased or decreased the area served by the school to coincide with racial residential patterns (R. 26,886, Vol. V, pp. 1527-1534). For example, the school board established the Hillsdale School as the only metropolitan school serving grades 1-12 in order to restrict its attendance area to a small black community in the western part of the metropolitan area. School segregation was also the objective in arranging grade structures at four white schools surrounding a black school in northern metropolitan Mobile to enable white students to attend one white school for grade 6, a second for grades 7 and 8, a third for grade 9, and a fourth for grade 10, all in order to prevent their attendance at a nearby black school (R. 26,886, Vol. IV, pp. 1331-32). An expert witness for petitioners, Dr. Myron Lieberman, a Professor of Education at Rhode Island College, testified without contradiction that he had never encountered a school system with as many deviations in grade structures as Mobile and that, while not questioning the necessity for deviations in grade structures, the problem in Mobile is "that the deviations always seem to result in more segregation, not less" (R. 26,886, Vol. V, pp. 1526-32).

d. *Classroom Additions, Construction, Closings, and Conversions.* The Mobile School Board has not always been able to determine the racial composition of schools by the establishment of zone lines, transportation of students, reassignment of portables, and reorganization of grade structures. The task of maintaining school segregation has often involved more permanent decisions concerning construction of both new schools and additional classrooms to existing schools, the closing of some white schools to

avoid integration, and the conversion of other white schools to black schools.

The use of construction programs to perpetuate segregation is perhaps best illustrated by the board's response to the change in racial residential patterns in downtown Mobile which resulted in underutilization of white schools and the overcrowding of black schools. The board's short term response was the assignment of portable classrooms to black schools. Its long term solution was the construction of four new black schools and additions to a fifth existing black school in order to "relieve 35 of the 39 portables now in use in the formerly Negro schools of this area" (R. 26,886, Vol. VI, pp. 29-30). More generally, the board's procedures in determining the need for new schools, both in terms of location and size, have been based on the assumption that new schools will only serve predetermined racial groups (Brief Appendix, pp. 13-15).

The school board's use of its construction program to perpetuate segregation has received judicial recognition since the outset of this litigation. In 1963, when the school board sought to justify to this Court its failure to even begin desegregation by pointing to its ongoing construction of "colored schools," Justice Black's opinion in chambers observed:

> Yet this record fails to show that the Mobile Board has made a single move of any kind looking toward a constitutional public school system. Instead, the Board in this case has rested on its insistence that continuation of the segregated system is in the best interests of the colored people and that desegregation would "seriously delay and possibly completely stop" the Board's building program "particularly in the improvement of and completion of sufficient colored schools

> which are so urgently needed." In recent years, more than 50% of its building funds, the Board pointed out to the parents and guardians of its colored pupils, had been spent to "build and improve colored schools," and of eleven million dollars that would be spent in 1963, over seven million would be devoted to "colored schools."
>
> . . . .
>
> It is quite apparent from these statements that Mobile County's program for the future of its public school system "lends itself to perpetuation of segregation," . . . *Davis* v. *Board of School Commissioners of Mobile County*, 11 L.ed.2d 26, 28 (1963).

Concern that the school board's construction program is being used to maintain segregation has also led the court of appeals on two occasions to order the suspension of school construction projects. 393 F.2d 690 at 697, and 414 F.2d 609 at 610.

The closing and conversion of schools is a segregation technique used by the school board often in conjunction with its school construction program. In downtown Mobile the school board has persistently sought to close underutilized white schools located close to overcrowded black schools in order to avoid the assignment of black students to these schools (Brief Appendix, p. 16). This has been done at the same time that portable classrooms have been assigned to black schools and proposals advanced to construct new black schools.

On other occasions the school board has converted white schools to black schools rather than close them. One example of this process occurred in the Prichard area of metropolitan Mobile where the board, in order to provide classroom space for black students, converted the Snug

Harbor and Turnerville Elementary Schools to black schools, renaming them as Adams and Palmer after locally prominent blacks, and reassigning white students elsewhere (Brief Appendix, pp. 12a-14a). The explicit racial considerations involved in these decisions are revealed by the school board memorandum set forth in the note below.[39]

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[39] R. 26,886, Vol. VI, p. 36 (Plt. Int. Exh. No. 72):

"May 1, 1963

"MEMO: Dr. Burns

From: Dr. Scarborough

RE: Your memo of April 26—Neece Property in the Snug Harbor area.

"The population in Prichard is fairly well stabilized by now it appears, so far as the total population is concerned. It appears to me that our difficulty lies not in too many or not enough schools, but in the matter in having the schools adjusted to the Negro or white population. With the addition of this new Prichard building for the Negroes, north of Carver Road, and the use of Snug Harbor and Turnerville School for Negro schools that for some time this would meet the needs of the population of the Negroes from Telegraph Road to St. Stephens Road and from the Prichard City Limits northward to Highway I-65.

"If the Board is to go along with permanent use of Snug Harbor and Turnerville for housing Negro children and by the building of the new Prichard Elementary School, north of Carver, I think you can see that they are fairly well housed. It is my opinion that if more Negroes move in that area we again would have to abandon another white school and that it in turn could house the increase of Negroes in a school between Craft Highway and Telegraph Road in the vicinity of Happy Hill. This would be a desirable substitution for Snug Harbor in that they would not have to cross the Craft traffic lane, but to make this exchange would cost the Board approximately one half of a million dollars. It is my opinion that they will want to forego crossing Craft Highway and continue with the present facility at Snug Harbor in order to save this one half million dollars in buildings.

"It might be worth consideration if the people, who resist our turning Snug Harbor into a Negro school, could find a way to make that property worth as much as a half of a million dol-

Summary of Argument

I.

The issue presented is what are the requirements of a final school desegregation plan that satisfies the requirements of *Brown* v. *Board of Education*, 347 U.S. 483 (1954). Petitioners believe that nothing less than total desegregation will suffice. But the Fifth Circuit and the Fourth Circuit are accepting the idea that some "reasonable" degree of desegregation satisfies the Constitution. We believe that this is incorrect. *Brown* decided that it was the individual constitutional right of each and every black child to have an education free of racial segregation. No black child should be assigned to a "black school"—that is one identified as the repository of minority children. The focus through the years since *Brown* on effecting a gradual transition to non-discriminatory systems has led the courts below into dealing with desegregation in a manner that now distorts the final objective by forever denying a desegregated education to large numbers of black children.

The goal required by the Constitution is that: every black child, at every grade in his educational career, must be free of assignment to a "black"—a racially identified

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lars. In such cases it might be worth the Board's consideration to abandon the use of Snug Harbor School and making use of the Neece property that we looked at. As I see it, these are the only reasons for our making use of the Neece property of which we looked.

"Naturally if we had the Neece property and an 18 room building with modern facilities, it would be much more valuable than our present Snug Harbor assignment, but it would house no more children. As an investment it might be wise, but in the matter of housing our children at the least possible cost to the citizens, it looks as if Snug Harbor is our best bet.

C. L. Scarborough"

minority—school. Racially identified minority schools are those which by reason of a very considerable racial concentration or disproportion are conceived as designed to receive black children.

II.

The Fifth Circuit's "neighborhood school concept" first, announced in *Ellis* v. *Board of Public Instruction of Orange County, Fla.*, 423 F.2d 203 (5th Cir. 1970), and later developed and applied in more than a score of cases during 1970 including the opinion below, is unworkable, undesirable and unconstitutional. The doctrine is not defended or defensible as non-racial or as affording a neutral basis for assignment. The doctrine does not reflect past school board policy. It was invented by the Fifth Circuit. The Fifth Circuit "neighborhood school concept" requires a balancing of a set of values labeled "neighborhood" against the value of total integration. The policy is unclear, and it involves complicated judgmental appraisals with differing results when applied by different judges.

Mobile has never had any neighborhood school assignment policy. Assignments have been based on a multitude of methods designed to further racial segregation including the use of busing to promote segregation. The Fifth Circuit principle as applied in the decision below leaves a full half of the black elementary children in metropolitan Mobile (where most of the blacks in the county reside) in schools which are all-black or virtually all-black.

III.

The Fourth Circuit is applying parallel doctrine of "reasonableness" which even more explicitly acknowledges that complete desegregation is not required. The concept is not based on an appraisal of the *workability* (Mr. Jus-

tice Harlan, concurring in *Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290, 292) of desegregation plans. Nevertheless at least in the Charlotte case the Fourth Circuit is requiring more integration than the Fifth. The contrast is striking. By a vote of 5-1 the Fourth Circuit in Charlotte rejected the school board's elementary plan on the ground that it left half of the black elementary school children in all-black schools. The opinion below in Mobile orders a plan which leaves half of the black elementary school children in all-black schools.

IV.

This Court should declare that every black child is to be free from assignment to a "black" school—an identifiable racial minority school—at every grade of his education. The only excuse from this general principle should be the case of *absolute unworkability* of any proposal for eliminating the racially identifiable black schools. Our concept of absolute unworkability refers to really extreme demographic or geographic flukes far beyond the range of concerns evidenced by recent Fifth Circuit decisions leaving all-black schools in most systems.

The general principle should not be relaxed on the basis of transportation inconveniences and costs, rigid theories of desired grade structures, neighborhood associational values, or fears of sending children to "strange or hostile" neighborhoods. When these rationalizations for continuing segregation are properly examined (particularly in the context of the practices in Mobile) they are all insufficient to justify failure to eliminate state imposed racial segregation. Mobile schools can be fully integrated merely by using the administrative techniques which have long been used in Mobile to keep schools separate.

We believe that the principles we urge will be easier to administer than those now employed by the lower courts.

They have the advantages of simplicity, uniformity, flexibility, and accomplishment of the objectives of the Constitution as construed in *Brown I*. The Constitutional goal of eliminating racially identifiable minority schools in dual systems is within the capacity of this nation to achieve. The promise of *Brown* is broken by the current approach of the courts below.

V.

Final school desegregation plans should not be approved without evidentiary hearings. The district court in this case failed to follow fundamentals of procedural fairness. We do not complain of mere isolated events or of irregularities caused by the need for speedy disposition of a difficult and complicated case. This record shows a consistent pattern of denial of hearings, and a repetitious pattern of deciding important issues based on the school board's *ex parte* factual submissions to the district court. This consistent course of conduct denied the fundamentals of due process: the right to be heard and to have the case decided on evidence introduced in court. *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U.S. 292 (1937); *Morgan* v. *United States*, 298 U.S. 468 (1936); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

ARGUMENT

I.

Introduction

This case presents a fundamental question with respect to the meaning and validity of this Court's historic decision rendered over sixteen years ago in *Brown* v. *Board of Education*, 347 U.S. 483 (1954) (*Brown I*). The issue presented is: What are the requirements of a final school desegregation plan: one that finally fulfills the commands of *Brown I* by vouchsafing to all black school children their rights to a desegregated education. Since 1955 when the Court announced in *Brown II* (*Brown* v. *Board of Education*, 349 U.S. 294 (1955)) that more time might be allowed to effect a transition to racially non-discriminatory school systems, and increasingly in recent terms (see, e.g., *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968); *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970); *Northcross* v. *Board of Education*, 397 U.S. 232 (1970)) this Court's school desegregation decisions have been concerned with the question, *how soon?* The Court has finally answered that question. The answer is, now.[31] The remaining question is, *how much*—that is, how much desegregation must occur before a school district has finally satisfied the requirements of *Brown I*. The answer will determine whether the promise of *Brown* will be kept or broken for countless black children.

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[31] "Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969).

One would have supposed that the answer to that question was plain from *Brown I* itself; nothing less than total desegregation will suffice.[32] But this is not the answer that the Court of Appeals for the Fifth Circuit has accepted in this case, nor in other recent school desegregation decisions, nor is it the answer of the Court of Appeals for the Fourth Circuit in *Swann* v. *Charlotte-Mecklenburg Board of Education*, —— F.2d —— (May 26, 1970), certiorari granted, 399 U.S. 926 (1970). Both the Fourth and Fifth Circuits, by differing formulations which amount to the same thing in the end, have accepted the notion that a "reasonable" degree of desegregation discharges the obligation of *Brown I*—with the result that now, at the end of the road of desegregation, as a final fulfillment of the promise of *Brown I*, thousands upon thousands of southern black school children are to be permitted to remain in "black" schools. In the recent Fifth Circuit decisions, frequently as many as one-fifth or one-fourth of the black school population of a district is required to remain in all-black or virtually all-black schools and, doubtless, the effect of *Swann, supra*, will be much the same in the Fourth Circuit.

This remaining segregation is not the result of a shirking of desegregation efforts by the Fifth Circuit (or the Fourth). To the contrary, the Fifth Circuit has worked tirelessly to desegregate the schools, and has afforded review of a large number of school cases at a greatly accelerated pace since this Court's decision in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969).

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[32] "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." *Brown* v. *Board of Education*, 347 U.S. 483, 495 (1954).

Nor is the continuing segregation the result of failures in the details of specific desegregation plans which the courts in both circuits—particularly the Fifth—have worked to hammer out in painstaking detail. Rather, the breaking of the promise of *Brown I* to perhaps 20 or 25 percent or more of southern black school children is the result of a mistake of basic principle which, paradoxically, seems to arise precisely from the long desegregation efforts of both circuits. Even more than this Court, the Courts of Appeals of the Fourth and Fifth Circuits have been long and continuously concerned with *how soon,* and with how to speed the process of desegregation. In this concentration upon means—and particularly the means of interim adjustment—the Fourth and Fifth Circuits have developed principles and outlooks which, while quite serviceable during the period of transition envisaged by *Brown II,* distort the ultimate end which it was the purpose of that transition to attain.

What we mean is this: *Brown I* decided that it was the right—the individual and particular right—of every black school child to have an educational experience free of the demeaning and damaging effects of racial segregation. It was the right of each not to be compelled to attend a "black" school—that is, one identified as the repository of black children because they were black. *Brown II* recognized that the creation of school systems which would fulfill this right could not be instantaneously achieved, and it ushered in a period of adjustment during which it was quite candidly recognized that some black children would be denied this right while changes in the system were made, looking to a time when all should have realization of the right. The adjustment took—and perhaps had to take—a number of forms. Black children were denied an integrated education in 1955 and 1960 which it was recognized that

identically situated black children would be getting in 1965 and 1970.[33] Black children were denied an integrated education for six years—throughout grammar school—which it was planned that those same black children would get for three years—in junior high or high school.[34] Black children in some schools were denied an integrated education under a comprehensive school plan which gave an integrated education to other black children in other schools.[35] True to *Brown I*, it could not be said that any of these children were receiving the desegregated education to which they were constitutionally entitled: But the denial to them of a constitutional, desegregated education was accepted as a part of the process of transition, while the focus of attention was upon the development of school *systems* that could eventually give all black children their constitutional rights.

Concentration on desegregation of *systems* was necessary during the transitional period, and it remains neces-

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[33] See, for example, the approval of stair-step grade-a-year desegregation plans as in Mobile in 1963. *Davis* v. *Board of School Commissioners of Mobile County*, 322 F.2d 356, 359-360 (1963) (14a).

[34] Thus, for example, in 1966 the Fifth Circuit described Mobile's plan: "The plan was to have application in the school year 1963-64 to the twelfth grade in the city of Mobile only, in the school year 1964-65 it was to have application to the eleventh and twelfth grades in all schools in Mobile County and to the first and tenth grades in the city of Mobile schools. In 1965-66 it was to have application to grades one, two, nine, ten, eleven and twelve of all schools of Mobile County. In 1966-67, grades three and eight were to be added, in 1967-68, grades four and seven were to be added, in 1968-69, grade five was to be added, and in 1969-70 it became applicable to grade six." (*Davis* v. *Board of School Commissioners of Mobile Cty.*, 364 F.2d 896, 900 (1966) (67a). The court later ordered that all grades be desegregated by September 1967 (374 F.2d at 904).

[35] See, for example, the Fifth Circuit order allowing the district judge in the Mobile case to defer the start of desegregation in rural Mobile schools for a year after it was to begin in the city of Mobile. *Davis* v. *Board of School Commissioners of Mobile County*, 322 F.2d 356, 359 (1963) (14a).

sary in the sense that the end result of the transition must be school systems that provide the opportunity for desegregated education. But concentration upon systems cannot be permitted to obscure the ultimate goal which is the vindication of every black child's right to a desegregated education. This right—recognized by *Brown I*—is not simply to be educated within a system in which some other black children, even a majority of black children, are given a desegregated education. It is a right of each and every black child to have a desegregated education himself. (And it is not a right to merely 3 or 6 years of desegregated education, but to a complete—twelve year—desegregated education.) So the necessary feature of a final school desegregation plan, one that ends the transitional period and fulfills the promise and command of *Brown*, is that every black child receive an education during no part of which he is assigned to a "black" school—a school identifiable as a school for blacks. *Brown* requires the end of the racially identifiable minority schools—the schools which by reason of a very considerable racial concentration or disproportion are conceived as designed to receive black children. The final Fifth Circuit plans, as exemplified by its Mobile decision below, and the final Fourth Circuit plans envisaged by the Charlotte-Mecklenburg decision (*Swann, supra*), which leave large numbers of black children in identifiable "black" schools, simply do not satisfy this ultimate goal. What has happened is that the Fourth and Fifth Circuits have permitted the thinking of the transitional period—that some black children might be denied their rights for a time—to carry over and define the ultimate goal of the transition, as a measure of finally satisfactory desegregation, so that it is now accepted that "desegregation" is satisfactory which will *forever* deny twenty to twenty-five percent of black children (or even more) a desegregated education.

We deal below with the doctrines that have led to this result. But what is required in these cases is that this Court set right, once and for all, the ultimate matter of principle, of the goal which every desegregation plan must achieve (and under *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), and *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970), must achieve *now*). That goal is: that *every* black child, at *every* grade in his educational career, must be free of assignment to a "black"—a racially identified minority—school. If and when this Court announces that principle clearly, we are sure that the Fourth and Fifth Circuits will find it no more difficult to administer—and in many ways easier to administer—than the principles which they are now administering, which call for most—some uncertain number less than all—black children to realize their constitutional rights.

II.

The Fifth Circuit's Approach to Final School Desegregation Plans Since Alexander and Carter.

A. *Ellis* v. *Board of Public Instruction of Orange County*: Announcement of the "Neighborhood School" Concept.

On February 17, 1970, shortly after this Court's decisions in *Alexander*[36] and *Carter*,[37] the Fifth Circuit announced for the first time[38] that it would require application of a

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[36] *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969).

[37] *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970).

[38] Before *Alexander*, the Fifth Circuit had been engaged in deciding a number of cases involving the adequacy or inadequacy of freedom of choice plans under this Court's decisions in *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1963); *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968); and

"neighborhood school" concept in final desegregation plans. This announcement came in a decision by Judge Bell in *Ellis* v. *Board of Public Instruction of Orange County, Fla.*, 423 F.2d 203 (5th Cir. 1970). In the *Orange County* case (*Ellis, supra*) the Fifth Circuit found that the board's geographic zoning plan left 51% of the black students in eleven all-black schools. The board said it wished to maintain a neighborhood basis of assignment but the Fifth Circuit found "variances . . . from the neighborhood school assignment system with the result that some white students are attending schools located greater distances from their home than nearby schools where the student body is all

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Raney v. *Board of Education*, 391 U.S. 443 (1968). See, e.g., *Adams* v. *Mathews*, 403 F.2d 181 (5th Cir. 1968); *Hall* v. *St. Helena Parish School Board*, 417 F.2d 801 (5th Cir. 1969), cert. denied, 396 U.S. 904 (1969); *United States* v. *Hinds County School Bd.*, 417 F.2d 852 (5th Cir. 1969), reversed as to delay granted *sub nom. Alexander, supra*. In *Adams* v. *Mathews, supra*, at 189, the Fifth Circuit announced that plans leaving all-Negro schools were unsatisfactory.

> "If in a school district there are still all-Negro schools or only a small fraction of Negroes in white schools, or no substantial integration of faculties and school activities then, as a matter of law, the existing plan fails to meet constitutional standards as established in *Green*.

This language was reiterated in *Henry* v. *Clarksdale Municipal Separate School Dist.*, 409 F.2d 682, 689 (5th Cir. 1969).

The Fifth Circuit held in several cases that geographic zoning plans for desegregation could be accepted only if they actually worked to desegregate the schools—they were to be judged by the same principle applied to free choice plans. See, e.g., *United States* v. *Greenwood Municipal Separate School Dist.*, 406 F.2d 1086 (5th Cir. 1968), cert. denied, 395 U.S. 907 (1969); *Henry* v. *Clarksdale Municipal Separate School Dist.*, 409 F.2d 682 (5th Cir. 1969), cert. denied, 396 U.S. 940 (1969); *United States* v. *Indianola Municipal Separate School Dist.*, 410 F.2d 626 (5th Cir. 1969), cert. denied, 396 U.S. 1011 (1970). The same rule was applied in an earlier appeal in the Mobile County cases holding that the board zones failed to achieve sufficient desegregation. *Davis* v. *Board of School Commissioners of Mobile County*, 414 F.2d 609 (5th Cir. 1969).

Negro" (423 F.2d at 207). The Fifth Circuit decided "this cannot be permitted in a school system operated on a neighborhood basis" (*ibid.*) and required that the board adopt what the Fifth Circuit called "a true neighborhood assignment system, assigning students to the school nearest the student's home up to the capacity of the given school" (*ibid.*).

The *Ellis* decision ordered a plan based on zone lines equidistant between schools, but limited by the existing capacity of schools, and also leaving to the board the decision whether "to expand present facilities" (*ibid.*). The court said that the principle must be applied "without exception" and without "variances":

> We also hold that the neighborhood system, based on school capacity, must be observed without exception. This will prevent any variance based on traffic conditions, such as are disclosed in the supplemental findings of fact with respect to 53 students who should go to Callahan school, or by zone line locations as is the case with five children who should be assigned to the Webster Avenue school. Variances by arbitrary zone lines, or for reasons of traffic, while reasonable on their face, may destroy the integrity and the stability of the entire assignment plan. If Orange County wishes to maintain a neighborhood assignment system, then it must do so without variances. Each student in the system must be assigned to attend the school nearest his or her home, limited only by the capacity of the school, and then to the next nearest school. (*Ellis, supra,* 423 F.2d 203, 207-208.)

Applying this Fifth Circuit no-variances "neighborhood" principle to the Orange County system—which had 68,012 white pupils (82%) and 14,856 blacks (18%)—left three all-black schools which would serve 2,397 black elementary

students (27% of black elementary pupils and 16% of all black pupils). The Fifth Circuit's neighborhood plan left these 2,397 black pupils in all-black schools because—the court said—their segregation resulted from residential patterns. The court concluded that student desegregation "will be accomplished once the district court requires and ascertains as a fact that the neighborhood student assignment system, based on the definition herein contained is invoked and the transfers made necessary thereby have been made" (423 F.2d at 208).

B. *Analysis of the "Neighborhood School" Concept, Fifth Circuit Style.*

Analysis of the "neighborhood school" concept—Fifth Circuit style—requires a consideration of the host of decisions in which the concept has been applied since *Orange County, supra.*[39] A number of characteristics of the

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[39] There have been several dozen Fifth Circuit school desegregation decisions during 1970 to date. The following is a selective listing of cases since *Orange County* which deal with the "neighborhood school" concept.

1. *Andrews* v. *City of Monroe,* 425 F.2d 1017 (5th Cir. 1970)
2. *Singleton* v. *Jackson Municipal Separate School Dist.,* 426 F.2d 1364 (5th Cir. 1970)
3. *Mannings* v. *Board of Public Instruction of Hillsborough County,* 427 F.2d 874 (5th Cir. 1970)
4. *Harvest* v. *Board of Public Instruction of Manatee County,* No. 29425 (5th Cir., June 26, 1970)
5. *Carr* v. *Montgomery County Board of Education,* No. 29521 (5th Cir., June 29, 1970)
6. *Bradley* v. *Board of Public Instruction of Pinellas County,* No. 28639 (5th Cir., July 1, 1970), new opinion substituted on rehearing (July 28, 1970)
7. *Hightower* v. *West,* No. 29993 (5th Cir., July 14, 1970)
8. *Lee* v. *Macon County Board of Education,* No. 29584 (5th Cir., July 15, 1970)
9. *Tillman* v. *Board of Public Instruction of Volusia County,* No. 29180 (5th Cir., July 21, 1970)

"neighborhood" concept have unfolded as it has been applied to a variety of factual contexts by different panels of the Fifth Circuit:

First, the Fifth Circuit concept is not a doctrine which asserts that strict geographic zoning, in the context of these school systems, is "non-racial." This is admitted by the Fifth Circuit in the *Orange County* and *Mannings* cases and is the holding of a number of the recent Fifth Circuit decisions (*Andrews* v. *City of Monroe; Henry* v. *Clarksdale Municipal Separate School Dist.; Ross* v. *Eckels,* all cited in note 39, *supra*). As recognized also by both courts below in *Swann* v. *Charlotte-Mecklenburg Board of Education,* Oct. Term, 1970, No. 281, the "neighborhood" assignment is not non-racial, because the very school neighborhoods in question were created by state action to achieve school segregation. On the one hand housing, zoning, public housing, urban renewal and construction, and racial discrimina-

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10. *Youngblood* v. *Board of Public Instruction of Bay County,* No. 29369 (5th Cir., July 24, 1970)
11. *Wright* v. *Board of Public Instruction of Alachua County,* No. 29999 (5th Cir., Aug. 4, 1970)
12. *Singleton* v. *Jackson Municipal Separate School Dist.,* No. 29226 (5th Cir., Aug. 12, 1970)
13. *Pate* v. *Dade County School Board,* Nos. 29039 and 29179 (5th Cir., Aug. 12, 1970)
14. *Henry* v. *Clarksdale Municipal Separate School Dist.,* No. 29165 (5th Cir., Aug. 12, 1970)
15. *Allen* v. *Board of Public Instruction of Broward County,* No. 30032 (5th Cir., Aug. 18, 1970)
16. *Valley* v. *Rapides Parish School Board,* No. 30099 (5th Cir., Aug. 25, 1970)
17. *Conley* v. *Lake Charles School Board,* No. 30100 (5th Cir., Aug. 25, 1970)
18. *Ross* v. *Eckels,* No. 30080 (5th Cir., Aug. 25, 1970)
19. *Brown* v. *Board of Education of City of Bessemer,* No. 29209 (5th Cir., Aug. 28, 1970)
20. *Robertson* v. *Natchitoches Parish School Board,* No. 30031 (5th Cir., Aug. 31, 1970)

tion in housing, and on the other hand, school board decisions relating to school site selection, the determination of building sizes and capacities (including use of portable classrooms), grade structures, optional zones, non-contiguous zones, and bussing were all adjusted to create neighborhoods of convenience with the structure of the legally established dual school systems. To stop calling the system dual but assign pupils along the lines of convenience thus established is merely to permit the maintenance of identical—indeed, continuation of the same—segregation patterns under a different name. As Judge Wisdom observed in *Henry* v. *Clarksdale Municipal Separate School Dist.*, 409 F.2d 682, 689 (5th Cir. 1969):

> A school board's zoning policy may appear to be neutral but in fact tend to retard desegregation because it binds pupils to custom-segregated neighborhoods. In this situation, the board's failure to take corrective action amounts to the State's giving official sanction to continued school segregation, contrary to the mandate of this Court and of the Supreme Court.

And the court held, in the same *Clarksdale case* (409 F.2d at 683):

> As this case demonstrates, a school board's adoption of a geographic zoning system instead of a "freedom of choice" system is not a guarantee of effective desegregation. "Geographic zoning, like any other attendance plan adopted by a school board in this circuit, is acceptable only if it tends to disestablish rather than reinforce the dual system of segregated schools." *United States* v. *Greenwood Municipal Separate School District*, 5 Cir. 1968, 406 F.2d 1086.

The Fifth Circuit has simply made a determination to permit some *values*, generally expressed under the rubric

of "neighborhood school concept," to prevail over the recognized conflicting values and goals of a fully integrated school system (i.e., one in which *no* black child is *ever* assigned to a black school). For the Fifth Circuit holds that "neighborhood" assignment is *not* non-racial (see *Henry* v. *Clarksdale Municipal Separate School Dist.*, No. 29165 (5th Cir., Aug. 12, 1970); *Ross* v. *Eckels*, No. 30080 (5th Cir., Aug. 25, 1970); and the treatment of Toulminville school in the opinion below in Mobile). It holds that "black" schools must be disestablished "where reasonable alternatives exist," *Allen* v. *Board of Public Instruction of Broward County*, No. 30032 (5th Cir., Aug. 18, 1970);[40] and the "neighborhood school concept" is simply a verbal formula for indicting some alternatives as "unreasonable" where they involve "impracticable attendance zones or inordinate transportation problems," *Bradley* v. *Board of Public Instruction of Pinellas County*, No. 28639 (5th Cir., July 28, 1970) (new opinion on rehearing).

Second, the "neighborhood school concept" so used is not a description of any policy actually adopted in the past, or even used in the present, by any of the school boards. It is

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[40] Slip opinion, p. 10 (footnotes omitted) (per Judge Goldberg):

> In the conversion from dual school systems based on race to unitary school systems, the continued existence of all-black or virtually all-black schools is unacceptable where reasonable alternatives exist. And it is clear that one acceptable way to achieve reasonable alternatives is by pairing schools. The tenor of our decisions is unmistakable: where all-black or virtually all-black schools remain under a zoning plan, but it is practicable to desegregate some or all of the black schools by using the tool of pairing, the tool must be used. Thus we have required the pairing or clustering of schools in Dade County, Florida, in Pinellas County, Florida, in Hillsborough County, Florida, in Alachua County, Florida, in Clarksdale, Mississippi, and in Jackson, Mississippi, to mention only a few instances. It is now clear beyond peradventure that the tool of school pairing—a most viable tool in the school desegregation process—must be embraced where it is practicable and desegregation cannot be achieved by other means.

invoked (as in *Davis*, the opinion below) where the school board has never used a true "neighborhood school" system; and (as in *Mannings*[41] and *Davis*) where it does not now use a true "neighborhood school" system as defined in the *Orange County* case (*Ellis, supra*). This indicates both (a) that the Fifth Circuit is not accommodating local educational policy, but is inventing its own;[42] and (b) that the nature of the policy is to prefer certain values, labeled "neighborhood" to the value of the total integration.

Third, the "neighborhood school concept" so used is unworkable, undesirable, and unconstitutional:

(a) The concept is inherently unclear. "Neighborhood" means any one of a number of different pupil-assignment systems. For example, in *Ellis (Orange County), supra*, it means strict equidistant zoning based on school capacity. In *Mannings (Hillsborough County), supra*, it means either a strict *Ellis* neighborhood plan or pairing of schools for high schools, a requirement that schools be "paired on a neighborhood basis" for junior highs, and for elementary schools some zoned by what the court calls variously "discretionary" or "arbitrary" zone lines, with other schools required to be paired "without departing from neighborhood concepts." In *Davis* (the opinion below), it means

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[41] *Mannings* v. *Board of Public Instruction of Hillsborough County*, 427 F.2d 874 (5th Cir. 1970).

[42] The *Orange County* decision indicates very explicitly that the Fifth Circuit is creating its own definition of "neighborhood school policy":

> It was not clear from the opinion and findings of the district court that the defendants were in fact maintaining a neighborhood school system *as we would define such a system*. A neighborhood school system cannot be a system where variances are allowed to permit children a choice of not attending the nearest school to his or her residence and thereby avoiding assignment to a formerly Negro or formerly white school as the case may be." (*Ellis, supra*, 423 F.2d 203, 206) (emphasis added).

use of arbitrary zone lines in a Justice Department plan for pairing schools and recasting grade structures within a generalized "neighborhood concept." In *Ross* v. *Eckels (Houston, Texas), supra,* it means rejecting the trial judge's strict *Orange County* type plan based on equidistant capacity zoning in favor of the school board's discretionary zones for secondary schools (to get more desegregation) and court-ordered pairing of contiguous school zones for a number of elementary schools, with the pairings described only as "well within any reasonable definition of a neighborhood school system."

(b) It inevitably involves judgmental appraisals, without a consistent goal or measure, as to how far "neighborhood" considerations may weigh against the goal of total desegregation. It therefore leads to conflicting decisions by different Fifth Circuit panels (compare *Clarksdale* and *Houston* with *Orange County* and *Fulton County*),[43] and still more conflict in the decisions of differing district judges. This is inevitable because the only principle of decision is that "neighborhood" considerations are somehow to be "balanced" against considerations of eliminating the all-black schools. The weights to be assigned in balancing are left to the balancing judge.

(c) Its common result (except where geographic fortuity makes "neighborhood" considerations essentially insignificant (as in *Broward County*))[44] is to leave a significant

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[43] *Henry* v. *Clarksdale Municipal Separate School Dist.*, No. 29165 (5th Cir., Aug. 12, 1970); *Ross* v. *Eckels*, No. 30080 (5th Cir., Aug. 25, 1970); *Ellis* v. *Board of Public Instruction of Orange County*, 423 F.2d 203 (5th Cir. 1970); *Hightower* v. *West*, No. 29993 (5th Cir., July 14, 1970).

[44] *Allen* v. *Board of Public Instruction of Broward County*, No. 30032 (5th Cir., Aug. 18, 1970). The Fifth Circuit applied the pairing technique to desegregate each one of 13 schools left all-black or virtually all-black by the board's discretionary zone lines.

number of "black" schools—usually 20 or 25% of the black school population and a much larger percent of the black elementary school population. This is the ultimate evil and deficiency of the Fifth Circuit "neighborhood school concept": it simply denies the rights vouchsafed by *Brown I* to 20 to 25% of black children—or even more—forever.

C. *Application of the Fifth Circuit Approach in Mobile—the Opinion Below.*

Mobile has never had "neighborhood schools." All of the values which are supposedly embodied in the "neighborhood school concept" have consistently been subordinated by the Mobile School Board to the goal of racial segregation. This is so thoroughly documented in this record as to be virtually incontestable. (See the Statement, *supra*, pp. 27 to 37, and the Appendix to this brief containing the Statement from the Brief of the United States in the Fifth Circuit, *infra*.) In Mobile "neighborhood school" has been only a euphemism for racial separation. In his 1966 opinion in this case Judge Tuttle described the Mobile practice:

> Both in the testimony and in the briefs, much is said by the appellees about the virtues of "neighborhood schools." Of course, in the brief of the Board of Education, the word "neighborhood" doesn't mean what it usually means. When spoken of as a means to require Negro children to continue to attend a Negro school in the vicinity of their homes, it is spoken of as a "neighborhood" school plan. When the plan permits a white child to leave his Negro "neighborhood" to attend a white school in another "neighborhood" it becomes apparent that the "neighborhood" is something else again. As every member of this court knows, there are neighborhoods in the South and in every city of the South which contain both Negro and white

people. So far as has come to the attention of this court, no Board of Education has yet suggested that *every* child be required to attend his "neighborhood school" if the neighborhood school is a Negro school. Every board of education has claimed the right to assign every white child to a school other than the neighborhood school under such circumstances. And yet, when it is suggested that Negro children in Negro neighborhoods be permitted to break out of the segregated pattern of their own race in order to avoid the "inherently unequal" education of "separate educational facilities," the answer too often is that the children should attend their "neighborhood school."

So, too, there is a hollow sound to the superficially appealing statement that school areas are designed by observing safety factors such as highways, railroads, streams, etc. No matter how many such barriers there may be, none of them is so grave as to prevent the white child whose "area" school is Negro from crossing the barrier and enrolling in the nearest white school even though it be several intervening "areas" away. (*Davis* v. *Board of School Comm'rs of Mobile County*, 364 F.2d 896, 901 (5th Cir. 1966) (67a).)

Mobile did not have "neighborhood schools" under its plan during the last school year (1969-70), nor does it have "neighborhood schools" under the Justice Department plan ordered into effect by the Fifth Circuit for the current school year (1970-71). The opinion below states: "Unlike *Orange County (Ellis* v. *Orange County, supra)*, Mobile does not purport to use the strict neighborhood assignment system. It employs zones based on discretionary zone lines." The Justice Department plan promotes desegregation on the basis of arbitrary zones by pairing zones and changing grade structures.

There is nothing in the record in this case which demonstrates that the values involved in "neighborhood schools" amount to anything, or what they amount to. As "neighborhood schools" have never really been tried in Mobile as a policy of the system there is nothing in the Mobile experience which supports such a policy. The fact that the district judge repeatedly denied an evidentiary hearing (see part V, *infra*), masks the fact that the actual costs involved in establishing non-contiguous zones, or in pairing non-contiguous zones, or in providing more transportation are not established on this record. Unlike the record in the Charlotte case (*Swann*), there has never been any opportunity for factual inquiry in this case by which the courts might appraise the costs or the relative convenience of the various proposals to desegregate the system. For example, there is no factual data in the record at all relevant to the policy embodied in the plan approved by the Fifth Circuit of limiting pairings to schools with adjacent zones. Obviously in some instances the transportation required to bus pupils from non-contiguous zones will be no different than the transportation required in busing pupils between contiguous zones. In such circumstances, a policy of not pairing schools with non-contiguous zones does not even have any rational basis. There is no evidence in this record upon which one might make an informed judgment about whether pairing schools in Mobile with non-contiguous zones would require "inordinate transportation requirements." The last phrase was the one used in *Mannings*, where the court gave a particularly opaque explanation of the difference between "pairing on a neighborhood school concept"—which it approved—and the "other" kind of pairing that it disapproved. After noting that the pairings the Fifth Circuit was requiring were between schools which were adjacent and in close proximity, the court said:

> This type of assignment, denominated as pairing, is singularly distinguishable from the grouping of several schools, located in other than a neighborhood area, into one group for assignment purposes in order to manipulate racial balances through inordinate transportation requirements.
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> (*Mannings* v. *Board of Public Instruction of Hillsborough County*, No. 28643 (5th Cir., May 11, 1970), slip opinion, p. 7, note 2.)

Nothing in the record demonstrates that the Fifth Circuit neighborhood school concept has any particular educational or other community value. One must speculate at large about the relative merit of the Fifth Circuit "neighborhood school policy" as it has been applied in the opinion below.

The one thing that is plain about the policy as applied in Mobile is its result in leaving a substantial number of black children in all-black schools. The plan will leave six all-black or virtually all-black schools enrolling 5,351 black pupils. These 5,351 pupils represent 22% of the black pupils in metropolitan Mobile schools and a startling 50% of the black elementary pupils in metropolitan Mobile schools. The stark reality of the plan approved by the court below is that half of all black pupils will—during their elementary school years—attend schools that are all-black, the very schools that *Brown I* held unconstitutional.

III.

The Parallel Doctrine Applied by the Fourth Circuit.

The Fourth Circuit's "resonableness" test announced in *Swann* v. *Charlotte-Mecklenburg Board of Education*, —— F.2d —— (4th Cir. 1970), amounts to a process of weighing the same sorts of "neighborhood" values against total desegregation that the Fifth Circuit has been weighing. However, the Fourth Circuit decision is more explicit that total desegregation is not required, but only a reasonable amount of desegregation:

> . . . not every school in a unitary school system need be integrated; second, nevertheless, school boards must use all reasonable means to integrate the schools in their jurisdiction; and third, if black residential areas are so large that not all schools can be integrated by using reasonable means, school boards must take further steps to assure that pupils are not excluded from integrated schools on the basis of race. (*Swann*, No. 281, O.T. 1970, Appendix p. 1267a.)

The Fourth Circuit's disregard of factual findings of the district court in *Swann* relating to the feasibility of the transportation requirements of the district court desegregation plan highlights that the balancing process being utilized is not an appraisal of the "workability" of the plan (Mr. Justice Harlan, joined by Mr. Justice White, concurring in *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290, 292), but a balancing of values. As Judge Sobeloff expressed it the majority in *Swann* made "no more than an abstract, unexplicated judgment—a conclusion of the majority that, all things considered, desegregation of this school system is not worth the price." (*Swann*, *supra*, No. 281, O.T. 1970, Appendix 1288a). The dissenting opinions of Judges Sobeloff and Winter in *Swann* demonstrate that

there was no conclusion by the majority that the district court's plan was unworkable or not feasible.

At least in the *Swann* case the Fourth Circuit's "reasonableness test" seems to require significantly more desegregation than the Fifth Circuit requires by its "neighborhood school concept." This is strikingly demonstrated by the fact that the Fourth Circuit upheld the trial judge's rejection of the Charlotte-Mecklenburg board's plan because the "board's elementary school proposal . . . left about one-half of both the black and white elementary pupils in schools that were nearly completely segregated." Yet, precisely that result—one-half of the black elementary pupils completely segregated—was approved by the decision of the Fifth Circuit for Mobile.

IV.

The Legal Principles This Court Should Declare.

Petitioners urge that this Court declare the following general principle stating the goal which the courts should require to bring dual systems into compliance with the Constitution: *Every* black child is to be free from assignment to a "black" school—an identifiable racial minority school—at every grade of his education. We would define "identifiable racial minority schools" as those schools which by reason of a very considerable racial concentration or racial disproportion are conceived as designed to receive black children.[45] Our statement of the principle focuses on

[45] In judging concentration and disproportion, we refer to the racial make-up of the school administrative unit, leaving for separate resolution disputes relating to the racial composition of such political or administrative units. See, for example, the problem of a separate black school system located within a white county school system dealt with by the Eighth Circuit in *Haney* v. *County Board of Education of Sevier County, Ark.*, 410 F.2d 920 (8th Cir. 1969); and cf. *Wright* v. *County School Board of Greensville County, Va.*, 309 F. Supp. 671 (E.D. Va. 1970), *appeal pending*.

the black schools because we regard the elimination of racially identifiable "white" schools as an incident—albeit a necessary incident—to desegregation of these minority schools where black children are set apart as a separate caste.[46]

We believe that the only excuse from the general principle stated should be the case of absolute unworkability (cf. the concurring opinion of Mr. Justice Harlan in *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290, 292)[47] of any proposal for eliminating the black schools. The available techniques of desegregation are adequate to cope with most school systems without even approaching the

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[46] Judge Sobeloff has well-stated the significance of *Brown* in a recent decision:

> Certainly *Brown* had to do with the equalization of educational opportunity; but it stands for much more. *Brown* articulated the truth that *Plessy* chose to disregard: that relegation of blacks to separate facilities represents a declaration by the state that they are inferior and not to be associated with. By condemning the practices as "inherently unequal," the Court, at long last expunged the constitutional principle of black inferiority and white supremacy introduced by *Dred Scott*, and ordered the dismantling of the "impassable barrier" upheld by that case. (*Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County, South Carolina*, No. 14,571 (4th Cir., June 5, 1970) (concurring opinion), slip opinion pp. 8-9.)

> Judge Sobeloff also wrote: "Certainly it is hoped that under integration members of each race will benefit from unfettered contact with their peers. But school segregation is forbidden simply because its perpetuation is a living insult to the black children and immeasurably taints the education they receive. This is the precise lesson of Brown." (Id. at p. 11.)

[47] See also the language of Judge Sobeloff in *Swann* v. *Charlotte-Mecklenburg Board of Education*, —— F.2d —— (4th Cir., May 26, 1970) (dissenting opinion):

> Of course it goes without saying that school boards are not obligated to do the impossible. Federal courts do not joust at windmills. Thus it is proper to ask whether a plan is feasible, whether it can be accomplished.

range of real unworkability. We have in this country the available technology to integrate the schools. The concept of absolute unworkability refers only to extreme circumstances of geographical or demographic flukes—such as all-black towns far removed from whites—cases far beyond the range of concerns evidenced in the recent Fifth Circuit opinions leaving all-black schools.

Specifically, a relaxation of the general principle that every black child shall be free from assignment to a "black" school, cannot be justified on the basis of (a) transportation inconveniences and costs, (b) rigid theories about maintenance of grade structures, (c) "neighborhood" associational values such as facilitation of P.T.A. meetings, or (d) concerns that children not be sent to school in a "strange or hostile" neighborhood. We discuss below the inadequacy of each of these concerns as a basis for not achieving total desegregation of dual systems.

Transportation inconveniences and costs do not justify the retention of black schools. As the facts with respect to school busing become known, it is apparent that it is a wide-spread, normal and sensible part of the daily life of 18 million American pupils—forty percent of all school children. The United States Civil Rights Commission has put the busing issue in a fair perspective:

> In his statement, the President raised the issue of busing and cautioned that we must proceed with the least possible disruption to our children's education. Busing has become an emotionally charged word and the issues involved have been the subject of considerable misunderstanding. Many who oppose busing do so on the basis of certain assumptions, one of which is that riding to school disrupts a child's education and causes harm. This is a serious issue which should

not be argued solely in terms of assumptions or emotion. The Commission believes that facts which it has found in the course of its investigations may contribute to clarifying the issue and sharpening the debate over it.

Busing is neither a new nor a unique technique, and its use is not limited to facilitating desegregation. For example, for decades, black and white children, alike, in the South were bused as much as 50 miles or more each day to assure perfect racial segregation. In many cases, busing was the exclusive privilege of white children—black children often were required to walk considerable distances. No complaints then were heard from whites of any harmful effects. Nor was any concern exhibited over the damage suffered by black children through their deliberate segregation. The Supreme Court in *Brown* described vividly the nature of the harm to which Negro children were being subjected.

> "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Thus the arguments that some now make about the evils of busing would appear less than ingenuous. The plain fact is that every day of every school year 18 million pupils—40 percent of the Nation's public school children—are bused to and from school, and the buses log in the aggregate more than two billion miles—nine billion passenger miles—each year. It also should be understood that the overwhelming majority of school busing has nothing to do with desegregation

or achieving racial balance. The trend toward consolidation of schools, for example, particularly in rural areas, requires extensive busing. It causes no disruption to the educational routines of the children and is treated as normal and sensible.

Amid the controversy over busing, in many school systems, North and South, transportation is being used quietly and effectively as a means of bringing about desegregation. The bus rides are not long—in Berkeley, California, for example, a city of 120,000 people, the bus trip never exceeds 20 minutes—and it causes no harm. In the South, of course, the amount of busing needed to bring about desegregation frequently is considerably less than was required to maintain dual school systems. For example, at the Commission's 1968 hearing in Montgomery, Alabama, we found that black students in Selma, seeking to attend trade school, were bused some 50 miles to the nearly all-black Trenholm School in Montgomery, although the Rufus King trade school was located in Selma. Rufus King, however, was all-white.

It is a mistake to think of the problems of desegregation and the extent that busing is required to facilitate it solely in the context of the Nation's relatively few giant urban centers such as Chicago, New York, Los Angeles. In most of our cities the techniques necessary to accomplish desegregation are relatively simple and busing creates no hardships. The experience in communities which have successfully desegregated could easily be transferred to cities of greater size.

Even in giant urban centers, progress in desegregation does not require interminable bus rides or disruption of our children's education. The President, in discussing the recent California court decision requiring desegregation of the Los Angeles school system, quoted

"local leaders" as estimating that the total cost of busing will amount to 40-million dollars over the next school year. This estimate represented the contention of the defendants in that litigation. It was presented to the court for the purpose of arguing against the feasibility of desegregation in that city's school system. in fact, the court rejected this estimate as unrealistic.

In Los Angeles, as in other cities, substantial desegregation can be accomplished through relatively simple devices such as alteration of existing school attendance areas, school pairing, and the establishment of central schools. To be sure, transportation is necessary in giant urban centers as it is in smaller cities, but here too, it is false and defeatist to assume that the bus rides must be lengthy or that the education of our children will be disrupted.

In the Commission's view, the emphasis that some put on the issue of busing is misplaced. As most Americans would agree, it is the kind of education that awaits our children at the end of the bus rides that is really important.

(Statement of the United States Commission on Civil Rights Concerning the "Statement by the President on Elementary and Secondary School Desegregation", April 12, 1970.)

The fully developed record in the *Swann* case (No. 281, O.T. 1970), shows that furnishing bus transportation costs a relatively small amount of money in the context of the total costs of a school system. The average annual cost of busing in North Carolina is only about $20 per child. The figures on cost in this record indicate that the same thing is true in Mobile and that busing in Mobile also costs something around $20 per child per year (see Statement, *supra*,

p. 31). School busing frequently results in substantial savings in construction and other costs because it enables a system to purchase less expensive suburban land away from concentrated population areas (this is the pattern of new site acquisitions shown in the *Charlotte* case) and enables more complete use to be made of existing facilities notwithstanding population movements in a community.

It is generally recognized throughout the United States that school buses furnish the safest transportation available for school children. Judge McMillan's findings in the *Charlotte* case are based on the national data: "Upon the basis of data furnished by the school board and on the basis of statistics from the National Safety Council, it is found as a fact that travel by school bus is safer than walking or than riding in private vehicles" (Appendix in No. 281, p. 1202a) and "School bus transportation is safer than any other form of transportation for school children" (*Swann, supra,* Memorandum Decision of Aug. 3, 1970, not yet reported).

The widespread use of busing to achieve racial segregation has been completely established on this record in Mobile. The same thing has been shown in the Charlotte record and—as the Civil Rights Commission has reported—it is true in the South generally. The analysis done for the court below by the Department of Justice describing the use of busing to preserve segregation in Mobile in 1965 and 1967 is reprinted as an appendix to this brief. The Mobile board has made extensive use during very recent years of non-contiguous or split attendance zones with pupils transported outside their neighborhoods to promote racial segregation. The HEW plan urged by petitioners in the courts below (Plan B-1 Alternative) would integrate all schools in Mobile by use of transportation facilities and techniques of the same kind used by the Mobile board to

keep the system rigidly segregated. The court below acknowledged that "any one of the" HEW plans "would lead to a unitary system" but declined to require the board to make use of the same techniques to integrate the system that were used to keep it segregated. In the absence of any record showing that use of transportation to integrate all the Mobile schools as proposed by the HEW Plan B-1 Alternative is "unworkable" the board has not carried the "heavy burden" necessary to support the use of "a less effective method" of desegregation. *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 439 (1968).

The concern for maintenance of traditional grade structures—for example, all six elementary grades in each school—should not be permitted to justify continued racially identifiable minority schools. The pairing technique widely used to promote desegregation usually involves the alteration of grade structures. For example, pairing might commonly involve combining the attendance areas for two schools serving grades one to six and assigning grades 1-3 to one school and 4-6 to the other. This has the effect of enlarging the attendance area of each school, and frequently that will be sufficient to integrate two previously segregated schools. The same effect can also be achieved by other techniques such as closing small schools and consolidating programs in larger schools, building larger facilities so that larger geographic areas can be served, providing non-adjacent attendance areas—variously called attendance islands, non-contiguous zones, satellite zones, etc.—for schools so as to promote integration, and readjusting grade structures in clusters of more than two schools. Although pairings require students to change buildings, they will not be constantly shifting to new environments for their entire classes will move together at the appropriate grade levels to the buildings serving

their schools. Each pupil will attend his nearest school during some years. In other years, he and his neighbors will go to a school which may be more distant. The court below said petitioners used a euphemism in calling this a "shared neighborhood" plan, but that phrase accurately describes the pairing technique. Each pupil will share his "neighborhood school" at some point with pupils from another "neighborhood."

Both the Fourth and Fifth Circuits are now firmly on record in support of the use of the pairing technique.[48] The Fifth Circuit has made it clear that it will not permit any abstract idea of grade structure maintenance to block desegregation: "The restructuring of the grade system in the proposed pairings is not, by itself, such an indicium of educational unsoundness as to render an otherwise feasible alternative unacceptable. *Andrews* v. *City of Monroe*, 425 F.2d 1017 (5th Cir. 1970). No particular grade structure can be considered inviolate when constitutional rights hang in the balance." *Brown* v. *Board of Education of the City of Bessemer*, No. 29209 (5th Cir., Aug. 28, 1970) (Ingraham, J.). The Fourth Circuit in *Swann* also has required that there be consideration of "every method of desegregation, including rezoning with or without satellites, pairing, grouping and school consolidation" (Appendix No. 281, p. 1277a). The Mobile School Board has used a great variety of differing grade structures in organizing the schools to keep them segregated. This is detailed in the Statement, *supra*. Whatever educational values there may be in particular grade structures have been subordinated to the value of racial segregation by the Mobile Board. Now, to satisfy the obligation of *Brown I*,

[48] See, e.g., Judge Goldberg's opinion in *Allen* v. *Board of Public Instruction of Broward County*, No. 30032 (5th Cir. Aug. 18, 1970), quoted at note 40, *supra*, wherein he collects a sampling of cases where pairing has been required.

these values must be subordinated to the value of integration.

The concerns often voiced for maintenance of psychological or sociological "neighborhood" values often mask an appeal for preservation of racial homogeneity which is in the teeth of *Brown I*. The only sense in which such neighborhood values have been honored in Mobile is that where neighborhoods have been racially homogeneous the racial lines have coincided with the school lines. But assertions of such concerns as having schools accessible to homes so that parents can attend PTA meetings easily, and pupils can relate to a "neighborhood institution" are mostly reflections of a sentimentalized view of neighborhood schools having little relationship to reality in a nation where 40% of all children routinely ride the buses to school every day. For the small child whose school is far enough from home to require a bus ride, the value of closeness to home is already dissipated. Our nation's public schools (and often private schools, too) have been organized so as to utilize transportation technology and to subordinate values of closeness to home. The whole movement away from the one-room schoolhouse to the consolidated school has been based in part on use of the school bus and on a judgment that busing is a routine and useful tool of educational administration.

The Fifth Circuit "neighborhood school concept" does not rest on any established concern for the safety of children traveling to school. The rigid rule of *Orange County* using strict proximity zoning and building capacity expressly disclaims any variances for traffic problems (*Ellis, supra*, 423 F.2d 203, 208). Judge Simpson's opinion in *United States* v. *Indianola Municipal Separate School Dist.*, 410 F.2d 626 (5th Cir. 1969), demonstrates that claims based on safety must be closely analyzed, and that where

pupils of both races have freely crossed alleged "hazards" to attend segregated schools such claims are often mere excuses for not desegregating schools. Generally speaking, real safety hazards can be overcome by furnishing transportation to students if other means will not suffice. Segregation cannot be maintained on the theory that desegregation involves "safety hazards."

The concern that pupils not be bused to a neighborhood mainly inhabited by persons of another race because that neighborhood may be strange or "hostile" rests in essence on opposition to integration. This kind of hostility can no more be used to justify preserving segregation than any other form of opposition to integregation. *Cooper* v. *Aaron*, 358 U.S. 1 (1958). When segregation was the legal norm—and in places like Mobile long after *Brown I*—it was never thought that the value of going to school in a familiar neighborhood was sufficiently important to justify a breach of the racial rule decreed by segregation laws and practices. Such a value cannot be asserted now as an excuse for continuing the segregation patterns created by law. Segregation cannot be maintained on the basis of an appeal for maintenance of the comfortable patterns of the segregated past. To be sure, it will be a new experience for white children to be bused to a black residential area in many of our communities. This novelty consists mainly in the newness of integration, for the same children are now frequently bused equal distances from their homes in all-white neighborhoods. The opposition of white parents to busing of their children to black schools (or formerly schools now integrated but in black residential areas) is grounded in fear, prejudices and opposition to integration. Such obstacles must be overcome if the Equal Protection Clause is to be given full meaning. *Cooper* v. *Aaron*, 358 U.S. 1 (1958).

The elimination of racially segregated dual systems cannot be accomplished on the basis of desegregation techniques that require only busing of black pupils and which place all of the burdens of change on the black community. The Fifth Circuit now uniformly requires that school boards offer blacks left in all-black schools the option of transferring to *any* white school under a majority-to-minority transfer plan with free transportation and a priority for space—they can "bump" neighborhood whites if necessary. See, e.g., *Allen* v. *Board of Public Instruction of Broward County*, No. 30032 (5th Cir., Aug. 18, 1970). The device—like freedom of choice—depends on the courage of black children to break segregation patterns. It also disregards the professed concern about placing children in "strange and hostile" neighborhoods.

No lasting change can be expected by the use of desegregation plans which limit desegregation to those white citizens—mostly of lower incomes—who reside closest to the black ghettos while affluent areas remain segregated. Such plans are mere blueprints for racial separation in the future because of resegregation and the flight of whites from heavily black areas.

We cannot, under the Constitution, "consign another generation of children to education in racially isolated schools" while hoping for residential desegregation to be achieved through open housing laws.[49] It may be plausible to hope that fair housing laws will enable blacks to escape the ghetto. But there is little reason to expect that even a vigorous enforcement of such laws—and they now depend for the most part on case by case litigation by private citizens—will have any impact on the all-black schools.

[49] Statement of the United States Commission on Civil Rights concerning the "Statement by the President on Elementary and Secondary School Desegregation," April 12, 1970.

The concept that the black schools in the all-black neighborhoods might become integrated as the result of fair housing laws rests on assumptions entirely outside the experience with such laws—that whites will use fair housing law to move into black neighborhoods and thus integrate those neighborhoods and in turn integrate the all-black schools. The Fifth Circuit's statement that its policy of leaving all-black schools will be alleviated in the future by fair housing (see, e.g., *Hightower* v. *West,* No. 29993 (5th Cir., July 14, 1970) is merely an illusion. The idea that fair housing laws will enable Negroes to move to white neighborhoods (see *Ellis* and the opinion below) expresses a very long range hope. However, there is reason to fear the opposite result, that the "neighborhood school concept" will encourage housing segregation as an escape from school integration. As Judge Sobeloff observed in *Swann,* the rule "furnishes a powerful incentive to communities to perpetuate and deepen the effects of race separation so that, when challenged, they can protest that belated remedial action would be unduly burdensome" (Appendix No. 281, pp. 1290a-1291a).

We believe that our proposed principle, forbidding relegation of pupils to black schools except in cases of absolute unworkability of integration plans, has a number of merits. They include simplicity, uniformity, flexibility and satisfaction of the constitutional objectives stated in *Brown I.*

The virtue of relative simplicity is found in the sole exception based on the test of "workability." A test focusing on the goal of complete integration in every case except where desegregation simply cannot work can hope to reduce litigation and bring protracted litigation to an end. The multiple appeals in this case led Judge Goldberg to call plaintiffs' efforts to integrate the schools of Mobile County

"an almost Homeric odyssey."[50] Unfortunately, Mobile is not unique in being a community still largely having segregated schools notwithstanding years and years of litigation by Negro pupils seeking their rights under *Brown*. Our proposed principle is not offered as a panacea that will bring all litigation about school segregation to an end—that is too much to expect in the area of disputes about racial equality. But the relative simplicity of the rule, and its focus upon the practical workability of desegregation proposals should hasten the end of litigation in the same way this Court's decisions in *Green* and *Alexander* have accelerated the same process.

The principle petitioners urge will do much more to promote uniformity in desegregation enforcement than the approaches of the Fourth and Fifth Circuits. Our approach is not based on "balancing" the values of a "neighborhood" concept against the value of integration. The Fifth Circuit's "neighborhood" formula and the Fourth Circuit's "reasonableness" test involve the kind of judgmental balancing and evaluation of competing values in every case which insures that there will be little uniformity in desegregation case results where different men do the judging. The Fifth Circuit approach puts a premium on *ad hoc* evaluation of whether a particular school pairing for example, is really "worthwhile" to achieve integration or whether there has already been "sufficient" integration of other pupils in the system. There is no way to get uniformity with such a principle, and the best response that the Fifth Circuit can make when there is a criticism of the lack of uniformity of decision-making (as in Judge Clark's dissent in *Ross* v. *Eckels*, No. 30080 (5th Cir., Aug. 25, 1970)) is to say that "each case had to be judged on all

[50] *Davis* v. *Board of School Commissioners of Mobile County* (*Davis* v. *United States*), 422 F.2d 1139, 1140 (1970) (611a).

facts peculiar to this particular system," that "school cases are unique" and that "each school case must turn on its own facts." (*Ross* v. *Eckels, supra,* opinion of the court.)

The approach we urge has flexibility. It is flexible in that the *means* of desegregation may remain in local control so long as the goal is achieved. The major means of desegregation currently being used are discussed elsewhere in this brief. School consolidation and school closing, pairing or clustering schools, readjusting school zone lines, controlling school sizes through construction, expansion, portable classrooms and other means, site location, the use of non-contiguous or split zones, and transportation systems are all part of the technology of educational administration which can be adapted to serve the goal of desegregation. The Fourth Circuit has declared broadly in *Swann* that all such methods and any others must be considered. We urge that this Court follow the same pragmatic view of the available techniques. None of the techniques will suffice in every case. But generally flexible practical approaches can solve desegregation problems where there is the will to find such solutions.

The test of "absolute unworkability" leaves a doctrinal basis for dealing with the really extreme situations that may exist in a few communities, without allowing the unusual problems to paralyze the search for solutions of more typical desegregation problems. As the Civil Rights Commission has stated:[51]

> It is a mistake to think of the problems of desegregation and the extent that busing is required to facilitate it solely in the context of the Nation's relatively few giant urban centers such as Chicago, New York, or

[51] Statement of the United States Commission on Civil Rights concerning the "Statement by the President on Elementary and Secondary School Desegregation," April 12, 1970.

> Los Angeles. In most of our cities the techniques necessary to accomplish desegregation are relatively simple and create no hardships.

And also:

> The Commission is aware that the problem of school segregation is one of enormous difficulty and complexity. Yet a realistic assessment of the scope and dimensions of the problem should not result in resigned acceptance of its indefinite continuation or a defeatist conclusion that it is beyond our capacity to resolve. The Commission is convinced of the ability and will of the American people to respond affirmatively to a call to end the injustice that school segregation represents.

Finally, the principle stated by petitioners satisfies the Constitution. The Fifth Circuit has offered no satisfactory alternatives in a "neighborhood school concept" which can function as it has in Mobile to leave half of the black elementary pupils in schools which are unmistakably black—either all-black or virtually all-black. *Brown* must promise something more than a regime in which black children remain in the same black schools under a new justification. We believe our statement of the goal—no more black schools—is consistent with *Brown*. The Fifth Circuit announced this rule shortly after the *Green* decision (in *Adams* v. *Mathews*, 403 F.2d 181, 188 (5th Cir. 1968); *Henry* v. *Clarksdale Municipal Separate School Dist.*, 409 F.2d 682, 689 (1969); *United States* v. *Indianola Municipal Separate School Dist.*, 410 F.2d 626, 628 (1969)), and retreated from it after the requirement of immediate desegregation became established by *Alexander* and *Carter*, *supra*. We believe that our statement of the goal of dese-

gregation is entirely supported by this Court's decision in *Green* v. *County Board of New Kent County*, 391 U.S. 430, 435, 442 (1968):

> The pattern of separate "white" and "Negro" schools in the . . . system established under compulsion of state laws is precisely the pattern of segregation to which *Brown I* and *Brown II* were particularly addressed, and which *Brown I* declared unconstitutionally denied Negro school children equal protection of the laws. (391 U.S. at 435)
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>
> The Board must be required to formulate a new plan and . . . fashion steps which promise realistically to convert promptly to a system without a "white" school and a "Negro" school but just schools. (391 U.S. at 442)

The decision of the Court in these cases may decide whether the promise of *Brown* will be kept for thousands upon thousands of black children. That promise is broken by the current approach of the Fifth Circuit which leaves segregation intact in the main institutions of dual systems——the all-black schools. The current approach of the lower courts represents a new kind of gradualism which functions in much the same manner as the doctrine of "deliberate speed," now repudiated by *Alexander* and *Carter*. This Court should require that school districts maintaining dual systems desegregate the schools now and maintain them in a desegregated status without separate racially identifiable minority schools.

V.

Final School Desegregation Plans Should Not Be Approved Without Evidentiary Hearings. Petitioners Were Denied Due Process by the District Court's Ex Parte Procedures in Deciding the Case.

The Fifth Circuit's "neighborhood school principle" is so inherently unclear and subjective as to highlight the need for a full and fair development of the facts in adversary proceedings following the usual procedures. Findings of Fact based on such an adversary record and evidentiary hearings are all the more vital in a case such as this where the Fifth Circuit, and now this Court, is called upon to announce general principles of law which will vitally affect hundreds of thousands of citizens. Adherence to fundamentals of procedural fairness is essential where such vital public interests are at stake. Regretfully this case has been litigated in the district court by procedures which fall so far short of the essentials of fair play and due process as to call for special condemnation and the exercise of this Court's supervisory powers over the functioning of the lower federal courts. We are not complaining about some minor or isolated irregularity caused by the need for expeditious decision of the case, or the stringent time limitations imposed by the court of appeals. This record shows a consistent denial of evidentiary hearings over a period of years and the decision of important constitutional rights upon the basis of *ex parte* unsworn factual submissions to the district judge by the respondent school board. This consistent course of denials of fundamental fairness undermines the integrity of the entire judicial process.

The principal episodes we complain of are these: (a) denial of a hearing prior to entry of order of August 1,

1969 ordering a desegregation plan based in part on an HEW submission—*ex parte* meetings with court, school board and HEW; (b) denial of hearing prior to entry of order of January 31, 1970 approving school board plan with modifications—board plan never served on plaintiffs until February 27, 1970, nearly a month after its approval by court; (c) denial of hearing prior to order of April 14, 1970 making findings of fact at request of court of appeals entirely based on school board affidavits; (d) denial of notice or hearing and consideration of *ex parte* factual submissions prior to entry of order amending desegregation plan entered July 13, 1970; and (e) denial of notice or hearing and consideration of *ex parte* factual submissions prior to order of July 30, 1970 changing zones for 32 schools.

August 1, 1969 Order. Denial of a hearing following the Fifth Circuit's decision of June 3, 1969 was in direct disobedience of that court's order which stated that: "For plans as to which objections are made or amendments suggested, or *which in any event the district court will not approve without hearing,* the district court shall commence hearings beginning no later than ten days after the time for filing objections has expired." (414 F.2d 609, 611; emphasis added.) Nevertheless the district court held no hearing. The school board took the depositions of Dr. Joe Hall the responsible HEW official. When the United States attempted to take the depositions of the school board president and associate superintendent of schools the district court prevented this by granting a board motion that the depositions not be taken. On July 3, 1969, the district judge held an *ex parte* conference with school board representatives and HEW officials. Petitioners' attorneys had no notice of the meeting and learned of it when the board filed a stay application with Mr. Justice Black in July

1969, seeking a stay in part based on "facts" from the *ex parte* meeting.

January 31, 1970 Order. The court had before it two new HEW plans filed December 1, 1969, a school board plan of the same date and a Justice Department proposal submitted for the balance of the school year, at the time it entered the January 31, 1970 order. On January 14, 1970, this Court ordered that complete desegregation proceed in Mobile County not later than February 1, 1970. *Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290 (1970). The court held a "pretrial conference" January 23, but no trial. The district court thus ignored the suggestion in Mr. Justice Harlan's concurring opinion in *Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290, 292 (1970), that where HEW desegregation proposals were "already available the school districts are to bear the burden of demonstrating beyond question, *after a hearing,* the unworkability of the proposals . . . ." (Emphasis added). On January 2, 1970—a month after the board's plan was filed and when informal efforts were exhausted—petitioners filed a motion asking that they be served with a copy of the board's plan, which was filed with the court. The January 31 order adopted the board's plan with some modifications. Nearly a month later the district court on February 27, 1970 granted petitioners' motion for a copy of the board's plan, which was then served by the board. The district judge chose between the four plans presented without hearing any evidence. There was no opportunity for the parties to examine witnesses and present evidence with respect to the workability of the four plans under consideration.

April 14, 1970 Order. Because the district court had made no fact findings on matters the Fifth Circuit believed to be relevant, that court remanded the appeal for the trial judge to make findings of fact. Petitioners moved in the

district court on April 6, 1970 to establish a procedure whereby the board's proposed findings might be tested by an evidentiary hearing. This motion was denied April 14th. The district judge accepted the board's affidavit "excluding self-serving declarations and speculative opinions" as its own fact findings.

July 13, 1970 and July 30, 1970 Orders. The district court twice amended the desegregation plan in July, 1970 without any notice to petitioners. On at least two occasions new statistical information listing the numbers of pupils in each school by race under various versions of the plan were filed in the clerk's office by someone—presumably the court. The data apparently comes from the school board but its origin is not indicated. Nevertheless it has promptly been adopted in the district court order, and in the Fifth Circuit opinion of August 4, 1970.

Petitioners' repeated complaints to the Fifth Circuit about ex parte dealings and denial of hearings evoked little response from that court[52] until the Fifth Circuit opinion of August 28, 1970, which finally ordered rather cryptically that:

> (5) Henceforth, any time the school board desires to have changes in zone lines made, it shall give reasonable notice to the parties.

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[52] In a collateral proceeding, wherein district judge Thomas had enjoined certain civil rights advocates from engaging in certain demonstrations on the request of the school board, the Fifth Circuit did reverse because of the trial court's failure to make findings of fact. *Davis* v. *Board of School Commissioners of Mobile County* (*Davis* v. *United States*), 422 F.2d 1139 (5th Cir. 1970) (611a). The court refused a hearing on the evidence insisting that testimony be by affidavit only in connection with the preliminary injunction. This practice, too, may deny litigants a fair opportunity to develop the facts. See *Louisiana ex rel Gremillion* v. *N.A.A.C.P.*, 366 U.S. 293, 298 (1961) (Mr. Justice Frankfurter, concurring).

As the case now stands a final desegregation plan for Mobile's thousands of pupils has been approved without any semblance of an evidentiary hearing.

There can be no doubt that the procedures followed by the district court in this case do not comport with the fundamentals of due process. "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis* v. *Ordean*, 234 U.S. 385 (1914). Important rights may not be adjudicated on the basis of the privately acquired knowledge of the judge where a litigant is given no opportunity to make a showing about contested matters. *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U.S. 292 (1937). Due process is plainly not satisfied where one litigant communicates the vital facts to the court on an informal *ex parte* basis. See *Hall* v. *West*, 335 F.2d 481, 483-484 (5th Cir. 1964) condemning such *ex parte* consideration of another school desegregation case. A fair and open hearing is vital to the integrity of judicial proceedings. "Nothing can be treated as evidence which is not introduced as such." *Morgan* v. *United States*, 298 U.S. 468, 480, 481 (1936); *Interstate Commerce Commission* v. *Louisville & N.R. Co.*, 227 U.S. 88 (1912). "The right to such a hearing is one of the 'rudiments of fair play' (*Chicago, M. & St. P.R. Co.* v. *Polt*, 232 U.S. 165, 168) assured to every litigant by the Fourteenth Amendment as a minimal requirement." *Ohio Bell Telephone Co.* v. *Public Utilities Commission, supra* at 304. "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg* v. *Kelly*, 397 U.S. 254, 269 (1970).

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment below should be reversed insofar as it fails to provide for the elimination of all remaining racially identifiable minority schools and the cause remanded for the immediate implementation of a complete desegregation plan in accordance with the principles urged in this brief.

Respectfully submitted,

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APPENDIX

Brief of the United States in the Court of Appeals: Statement of Facts and Appendices B, C and D

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Brief of the United States in the Court of Appeals: Statement of Facts and Appendices B, C and D

IN THE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29,332

BIRDIE MAE DAVIS, et al.,
Plaintiffs-Appellants,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor-Appellant,

v.

BOARD OF SCHOOL COMMISSIONERS
OF MOBILE COUNTY, et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

BRIEF FOR THE UNITED STATES

Issue Presented

Whether, in view of the circumstances of this case and more effective options available, the district court erred in substantially adopting the school board's desegregation plan.

Statement

1. *Procedural History*

This Court has twice recently considered this case.[1] In June 1969 the Court disapproved a plan combining elements of freedom of choice, zoning, and minority-to-majority transfers, 414 F.2d 609. The district court was directed to request the assistance of the Office of Education of the United States Department of Health, Education and Welfare. The Office of Education developed a two-step desegregation plan, reaching all rural schools and the schools in the western portion of metropolitan Mobile in 1969-70, and reaching the eastern urban schools in 1970-71. The district court adopted a plan substantially the same as the first step of the HEW plan and directed submission of a revised plan for the eastern schools. That decision was affirmed by this Court in *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969) (en banc) (per curiam), *rev'd as to timing sub nom. Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970) (per curiam).

On December 1, 1969, plans were filed by the school board and HEW. (At the court's request, the Department of Justice filed on January 27, 1970, a separate proposal for implementation pendente lite.) On January 31, 1970, the district court adopted, with some modification, the school board's submission based on geographic zoning. After the board directed the staff to discontinue prepara-

[1] For earlier proceedings see 364 F.2d 896, 898-900 (5th Cir. 1966); 393 F.2d 690 (5th Cir. 1968).

tions for desegregation in view of the enactment of a state statute prohibiting assignment of students to schools on the basis of race, the district court on March 16 directed that students be reassigned according to its January 31 order, as modified. On March 20 the order was implemented by the board.

This Court on March 25 remanded the case for supplemental findings. The district court ordered the school board to submit by affidavit the facts sought and adopted the information furnished by the board.[2]

2. *Facts*

A. The Mobile County school system, with 42,620 white and 30,884 Negro students, (November 26, 1969 Report to the Court) is the largest in Alabama. In maintaining and operating a system of this size educational and administrative decisions have been made periodically affecting such matters as construction, location of new facilities, alteration of zone lines, grade structures and the use of school transportation.

Grade Structures. The Mobile schools have had grade structures which include 1-5, 1-6, 1-7, 1-8, 1-9, 1-12, 2-5, 6-7, 6-8, 6-9, 6-10, 6-12, 7, 7-8, 7-9, 7-11, 7-12, 8-12, 9-12, 10-11, 10-12. One school housed grades 1-4, 6 and 8 during the 1962-63 school year. (Pl. Ex. 22, 23, Pl.-Int. Ex. 29, July 1967 Hearing; A. in Nos. 27,260 and 27,491 Vol. I pp. 6-13; November 26, 1969 Report to the Court.)[3] Many

[2] The district court adopted the statistical information attached to the affidavit and indicated its belief that the "general information" furnished in the document "excluding self-serving declarations and speculative opinions" was correct.

[3] There are printed records from previous appeals in this case on file with the Court, and evidence has been introduced at several hearings. We will cite the printed records filed in early appeals by using R. for the 1965 appeal and A. for the printed appendices in the three appeals taken in 1968 and 1969. When referring to exhibits which are not part of printed records, we will indicate the date of the hearing and the exhibit number.

of the grade organizations had a clear racial effect: The Hillsdale school (Negro), located in a small Negro community surrounded by white neighborhoods, was the only facility in the metropolitan area that has served grades 1-12 (A. in No. 26,886 Vol. V P. 1527-1530);[4] the Marechael building was used as a one-grade school in 1963-64 to supplement the Emerson and Southside plants (both Negro) (Appendix A to our Trial Brief filed in this Court on September 23, 1967 in No. 25,175, p. A-2); and the Turnerville (Adams) plant covered grades 6-7 during 1965-66 and 1966-67 in order to absorb the 6th grade at all-Negro Whitley and the 7th grade at the Mobile County Training School, also a Negro school. (*id.* p. A-7).

Grade reorganizations were also made to cope with enrollment trends in the downtown Mobile and Prichard schools. White schools in this area were losing students while the enrollment at Negro schools increased,[5] and, as the number of students living in the area served by a school decreased, additional grades were often added to maintain the level of enrollment. The Gorgas school, for example, was expanded from grades 1-6 in 1964-65 to 1-7 in 1965-66 (Pl. Ex. 22 and Pl.-Int. Ex. 29 at July 1967 Hearings), and the Toulminville School was expanded from 7-9 in 1962-63 to 7-10 in 1963-64 and 7-11 in 1964-65 (*Id.* Pl.-Int. Ex. 29).[6]

Students have often been required to attend schools for a brief period before changing to another facility. For example, 6th grade students who attended Gorgas in 1965-66, were assigned to Old Shell Road for the 7th grade in 1966-67 (Appendix A to Trial Brief at p. A-10), Phillips

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[4] In 1968 it was reduced to 1-9 and in 1969 to 6-8.

[5] In 1966 the school board studied this problem and made a detailed report on it. See Trial Brief, Appendix B.

[6] In 1965-66 Toulminville was made a Negro school covering grades 10-11 only. See p. 18, *infra*.

for the 8th grade in 1967-68 (Ibid.), and Murphy in 1968-69 for grade 9 (A. in Nos. 27,260 and 27,491 Vol. I, p. 10). A 6th grade student at Emerson in 1963-64 would attend four schools in five years: grade 6 at Emerson, 7 at Marechael, 8 and 9 at Southside (Appendix A to Trial Brief, p. A-2), and grade 10 at Williamson (Pl. Ex. 23 at July 1968 Hearing). While some of these school changes were the result of opening and closing schools for racial reasons,[7] the board has used similar feeder organizations on a permanent basis. Pupils in the Indian Springs zone go to Indian Springs for the 6th grade, Eight Mile for the 7th and 8th, Clarke for the 9th, and Vigor for the 10th (A. in No. 26,886 Vol. IV, pp. 1331-1332).

The board's alterations in the grades taught at particular schools required, from time to time, that elementary school facilities be used for junior high or middle school grades,[8] that junior high plants be used for senior high grades,[9] and that senior high buildings house elementary and junior high grades.[10]

In making grade changes the board has paired (or grouped) two or more schools located on separate campuses to serve one set of grades. For 1963-64 the Emerson School zone was served by three schools: Emerson, grades 1-6; Marechael, grade 7; and the Old Lee School (later renamed Southside), grades 8-9. (See Appendix A to Trial Brief,

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[7] See *infra*, pp. 16-18.

[8] *E.g.*, Carver and Hall which are now being used as middle schools were both built as elementary schools, and last year Craighead was a junior high.

[9] *E.g.*, Toulminville was built to house only junior high students, and Williamson, which is now a senior high, covered grades 8-12 last year.

[10] *E.g.*, Hillsdale originally covered grades 1-12, but last year the board recommended using the plant for grades 1-9.

p. A-2).[11] During the 1964-65 school year, four schools were grouped to educate the white children in grades 1-6 in the Saraland-Satsuma area. (*Id.* at A-4). From 1965 to 1967 the Turnerville (Adams) school was grouped with Whitley and Mobile County Training Schools, located about 1.6 miles from Turnerville.[12]

Zones. In order to utilize efficiently available classroom space, the board has employed zoning, including noncontiguous or split attendance zones. As many as 18 noncontiguous attendance areas were used in a single year. (Appendix A to Trial Brief).[13] The zones included instances of combining rural areas with portions of metropolitan Mobile[14] and combining two or more noncontiguous areas in the city.[15] Maps on page 7a illustrate split elementary zones by shading in the same color areas served by the same school.[16]

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[11] Marechael was evidently always paired with Southside and is never mentioned separately when reports were made even though they are located several blocks apart.

[12] See also, *e.g.*, Snug Harbor (later Palmer) which was paired wtih Carver and Grant; and Toulminville, which was paired with Central. App. A to our Trial Brief at p. A-10.

[13] Appendix C, infra, lists the noncontiguous zones which were proposed or noted by the pupil placement recommendations each school year. It should be understood that the placement bulletins do not mention many of the split zone assignments that are to be continued without change.

[14] See *e.g.*, Old Shell Road-Griggs areas (Appendix to Trial Brief pp. A-4, A-10, A-11), St. Elmo-Hillsdale area (Id. p. A-5), and Brookley Air Force Base-Theodore (Id. p. A-2).

[15] See *e.g.*, Whistler zone (R. in No. 22,759, p. 253).

[16] Because most of the zones shown were used between 1964 and 1967 a 1965 map is used. See A. in No. 26,886, Vol. VI, P. 1. In some instances only certain grades were assigned to a school from its noncontiguous zone, and in other cases only Negro or white children in an area were assigned on the split-zone basis. The zones are taken from Appendix A to Trial Brief, except for the students transported to Rall from South Brookley which is taken from Appendix B to Trial Brief, p. 5.

Portable Classrooms. The Mobile County school system presently has 268 portable classrooms (A. in No. 26,886 Vol. I, pp. 90-94) which are shifted among schools as they are needed. For example, in preparing for the 1964-65 school year the board discontinued use of portables at the Lott and Brazier schools and added portables at twelve other schools. (Appendix A to Trial Brief, p. A-6). In 1963-64 the Hillsdale School (grades 1-9) had 24 portable and no permanent classrooms. (Pl. Int. Ex. 29, July 1967 hearing). In 1967-68 portable classrooms composed 50 per cent or more of the regular classroom space at thirteen schools in the system.[17]

Assignment of portables often reflects racial considerations. Thirteen portable classrooms were in use in 1967-68 at all-Negro Toulminville High School while traditionally white Murphy High, serving an adjacent attendance area, had none and was 410 students undercapacity. (A. in No. 26,886 Vol. I, pp. 92-93). In the same year the Negro Washington school had 15 portables while Phillips, a traditionally white junior high serving the adjacent attendance zone, had no portables and was 114 students undercapacity. The Nelson Adams School (Negro) serving grades 1-12 had no portables in 1967-68 although the (white) Lee (1-6), Saraland (1-6), and Satsuma (7-12) schools together serving basically the same attendance area as Adams, needed 14 portables, with 12 at Satsuma. All-Negro Blount High School (Negro) had 19 portables in 1967-68, while traditionally white Vigor High, located about six blocks away, had no portables and was 62 students under its normal capacity. (Id. pp. 90, 93).

Transportation. Mobile County school officials have traditionally provided transportation to students in the urban

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[17] An appendix to this brief, infra, p. 64, contains the number of portable classrooms used or recommended between 1964 and 1968 at schools where portables constituted substantial portions of the total capacities.

as well as the rural portions of the system. Between 1964-65 and 1967-68 the board bused from a high of just under 25,000 students to 22,094 per year. During this time it spent from $405,833 to $503,934 per year to operate the buses and between $43,787 and $137,911 on new buses each year. (Office of Education July 10, 1969, submission)

In 1966-67, in the metropolitan area alone, the board bused more than 7,000 students, approximately 2,350 of whom were transported because of noncontiguous zones.[18] (A. in No. 26,886, Vol. I, pp. 5-6). Over 580 were bused about 6.3 miles from the rural Saraland and Satsuma areas to the Mobile County Training School (Negro) located in the eastern section of metropolitan Mobile; 381 elementary and junior high school children were bused from the at-

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[18] The 1964-65 pupil-reassignment notice provides in part:

South Brookley—will serve its district for grades 1-5. The sixth grade will be transported to Craighead along with students presently transported.

Craighead—will serve its district for grades 1-6, plus the students formerly transported to Oakdale from Morningsdale in grades 1-6, those formerly transported to Arlington from Williams in grades 1-6, those presently transported to Craighead from South Brookley in grades 1-6 and the 6th grade from South Brookley.

Tanner Williams—grades 1-9 for its district only. Students now transported from Shaw and Semmes will return to those schools.

Fonvielle—reduce district and assign to Stanton Road. Will serve grades 1-5 with 6th grade transported to Palmer.

Hillsdale—grades 1-12. Discontinue transportation to St. Elmo. Double session grades 1-4 until building is complete in November. Add to Hillsdale students transported from Highway 98 west (beyond Howell's Ferry Road), formerly transported to Warren, Washington and Central.

Thomas—grades 1-8. Assign 8th grade to Blount. Continue to transport those students enrolled at Mobile County Training.

The assignments are taken from our Trial Brief, Appendix A, p. A-4, A-5. For a more complete list of split zones where transportation was offered see the remainder of Appendix A to the Trial Brief and appendix to this brief, *infra* p. 61.

tendance areas served by the white Austin school (white) to the Warren and Washington schools (Negro), all of which are located in the city. (Ibid.)

Some schools in the city have a high percentage of their students transported from other areas. In 1966-67, approximately 61 per cent of the third grade pupils at Craighead school were came from other attendance zones (Appendix C to Trial Brief, p. C-33) with the majority of the out-of-district students bused from the South Morningside and South Brookley areas about 5.5 and 7.4 miles away. At the Old Shell Road School for the same year 46 per cent of the third graders lived in other attendance zones, (Id. p. C-34), coming from as far as the Todd Acres area, located outside the city limits about 11.4 miles away. The Todd Acres students (white) who were bused lived closer to at least 10 other elementary schools, most of which are also white schools.

Construction. The board has consciously selected building sites and constructed schools in a manner designed to perpetuate separate schools for Negro and white children. A report prepared by the school staff in 1967 discussing some of the existing school capacity problems treated separately problems of overcrowding in Negro schools and problems of underpopulation in white facilities in the same downtown Mobile area.[19] Rather than reassign the students to utilize the existing schools equally, the board made plans to construct four schools in Negro areas and build an addition to a fifth which "will relieve 35 of the 39 portables now in use in the formerly Negro schools of this area." (Report, Appendix B to Trial Brief, pp. 5-6)

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[19] The reports notes 23 vacant classrooms at "formerly white schools" and predicts a possible additional 21 vacant classrooms at those schools; separately treated were "formerly Negro schools" having 39 portables. See *Report on Research of the Pupil Personnel for Use in Planning for the Full Utilization of School Facilities in Downtown Area.* See Appendix B to Trial Brief.

The school system has a standard form used to justify the need for establishing a new plant on a particular site (Pl. Int. Ex. 61 July 1967 hearing). The form requires a listing of the distances to the closest schools offering the same grades, distances to the closest schools accommodating higher grades, and schools where children in the proposed new district are now enrolled. In every case where these questions are unanswered, the schools listed are of the same race. If a school for Negroes is contemplated, all the schools listed are Negro; if a school for whites is planned, all the schools named are white.

Mobile County school officials, in order to determine the racial composition of a contemplated new school, consult with agencies whose programs may affect the need for school facilities. For example, in 1964 the Prichard Housing Authority informed the school system of the number of nonwhite students who would be living in the "newly formed Robbins District"[20] (Pl. Int. Ex. 87, July 1967 hearing) and, after the school officials asked about white children, replied that in calculating the number of students living in the urban renewal area to be included in the school attendance zone, "[t]he ratio of white families and children is not included as we believe that each and every white family located within this 116 acres will relocate outside of the area." (Ibid.)[21] When the Robbins school was completed, it housed only Negro children.[22]

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[20] Similar letters were written concerning the all-Negro Blount High School (Pl. Int. Ex. 87, July 1967 hearing).

[21] The area served by Robbins had previously been discussed on May 1, 1963, in a memorandum from an assistant superintendent to Dr. Burns saying (Pl. Int. Ex. 87, July 1967 hearing):

> If the Board is to go along with permanent use of Snug Harbor and Turnerville for housing Negro children and by the building of the New Prichard Elementary School, north of Carver, I think that you can see that they are fairly well housed.

[22] In addition to consulting with other governmental agencies, the school officials sometimes checked with the leaders of the Negro

The location and design of many schools reflect the racial considerations in their planning.[23] Blount High School (Negro) with a capacity of 1972 students was built about six blocks from the traditionally white Vigor High School (capacity 1769) (A. in 26,886, Vol. VI, p. 40). The Williamson Junior-Senior High School (capacity 1350), also Negro, was built about 14 blocks from the white Eanes Junior High School (capacity 1218) and less than 20 blocks from the white Murphy High School (capacity 2813) (Id. pp. 40, 42). The Mobile County Training School was rebuilt in 1967 on the back edge of a Negro neighborhood, and is bordered on the other side by the Mobile River, even though, as the Acting Director of the Mobile City Planning Commission testified, the population in its service area was not sufficient to support a high school (Id. Vol. III, p. 929).[24]

School Closings and Conversions. The school board has closed white schools with declining enrollments which were located near overcrowded Negro schools and has converted

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or white communities depending on which racial community a new school was planned to serve. When the new Cleveland School (now called Adams) was being considered, the board sought the advice and assistance of the Negro community in the areas to be served. (A. in No. 26,886, Vol. III, pp. 758-765; Pl. Ex. 25, July 1967 hearing).

[23] The most recent construction efforts of the school board—to build a new high school on the same campus as the existing all-Negro Gorgas and Toulminville schools, and replace the Negro Howard Elementary School—were enjoined by this Court pending the appeal which resulted in the June 3, 1969, decision. 414 F.2d 609. The June 3 order continued the injunction until attendance zones were drawn in accordance with the Court's mandate. 414 F.2d at 610.

[24] Similarly, the Hillsdale School was planned and equipped for students in grades 1-2 because there was no Negro junior or senior high school nearby. The Toulminville and Prichard schools were constructed as white junior high facilities with capacities of only 609 students—far less than any other junior high in the metropolitan area. Such design is consistent with the fact that they

other underpopulated white schools into all-Negro facilities. Predominantly white Oakdale, Barton, and Russell, all serving areas adjacent to zones served by overcrowded Negro schools, were all closed because their white enrollments were too small to permit their efficient operation as white schools.[25] After several years of declining white enrollment at Arlington school, the board proposed for 1968-69 that the school serve students transported from South Brookley, a noncontiguous area (A. in No. 26,886, Vol. VI, p. 41). Arlington served an attendance zone adjacent to the area served by the Council school (Negro). The district court ordered that Arlington be used to serve the elementary students in the area surrounding it, and its enrollment was 384 white and 153 Negro. (A. in Nos. 27,260 and 27,491, p. 6). The board's December 1969 plan proposed closing Arlington, and it is now closed pursuant to the district court's adoption of that plan.

An alternative to closing white schools was suggested in a May 1963 memorandum from an assistant superintendent suggesting that there were enough schools in the Prichard area and the only problem was "in having the schools adjusted to the Negro or white population." (Pl. Int. Ex. 87, July 1968 hearing). Thus, in that year, the board changed two previously white schools in the Prichard area, Snug Harbor and Turnerville, to all-Negro schools.[26] For the

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served small white neighborhoods with the former school's zone surrounded by Negro residential areas and the latter's bordered on three sides by Negro areas. The new Southside Junior High School proposed by the board was planned as another small facility, with just enough space to accommodate the pupils feeding in from the Negro Emerson and Council elementary school areas.

[25] The board proposed a similar closing for old Shell Road, but the proposal was successfully opposed by the white community and the private plaintiffs and the government in this case.

[26] Even with the conversion of these two schools, Dr. Scarborough suggested other facilities might have to be changed. On May 1 he wrote a memorandum to the Superintendent saying: "[I]t is my

1963-64 school year the white students and teachers were reassigned to other schools.[27] The schools were renamed Adams (Turnerville) and Palmer (Snug Harbor) after prominent Negroes (*Id.*, Addenda to Board Agenda dated August 28, 1963) and given new attendance zones (*Id.*, Memorandum from McPherson to Scarborough dated August 20, 1963). Only Negro students and teachers were assigned to the schools; and they opened the following year as all-Negro schools, each having effectively been "converted from a white school to a Negro school" (Pl. Int. Ex. 87, July 1968 hearing, undated recommendations attached to minutes of August 28, 1963, board meeting).[28]

Similar conversions were effected at Toulminville, Gorgas, Southside, and Howard schools. Toulminville, for example, offering grades 7-11, was officially "closed" in March 1965.[29] (A. in No. 26,886, Vol. II, p. 95; Pl. Int.

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opinion that if more Negroes move in that area [Prichard] we again would have to abandon another white school and that it in turn could house the increase of Negroes. . . ." (Pl. Int. Ex. 87, July 1967 hearing).

[27] In effecting the conversion the board sent a questionnaire to each parent asking whether he planned to be living in the attendance zone for 1963-64 and requesting that he indicate a preference of three white schools in case the school his child attended was closed. (Such practices indicate how a school board can affect residential make-up.) These and other school conversions are discussed in detail in our trial brief, pp. 39-63.

[28] Adams was closed at the end of the 1966-67 school year, with students reassigned to the new Cleveland school (later renamed Adams) and to Mobile County Training School, both of which are Negro schools (*Id.* Ex. 14).

[29] At that time, students were reassigned, on paper, to two other schools and parents were notified of the reassignments. Actual reassignments were made the following fall. Toulminville had been expanded from grades 7-9 to 7-11 before the closing, was subsequently again expanded from 10-11 to 10-12 after the conversion. (Pl. Int. Ex. 23, July 1967 hearing). The school was also converted from an annex to Central to an independent facility with its own attendance area. (Pl. Int. Ex. 84, July 1967 hearing). See p. 5 *supra*.

Ex. 1, 83, 87, July 1967 hearing). At the commencement of the following year, after its students, teachers, and administrators were transferred to other schools, Toulminville opened with a Negro student body and faculty, and a grade structure of 10-11, as an annex to Central High (Negro). (Pl. Ex. 17, 22, Pl. Int. Ex. 94, 84, July 1967 hearing). In 1966-67 and 1967-68 the school board acted on the Gorgas school in the same manner. (A. in No. 26,886, Vol. II, p. 95).

APPENDIX B

This Appendix shows for each school in the system which was used this year, its normal capacity, the enrollment and grade structure as of September 26, 1969, the grade organization and projected enrollment under each of the desegregation plans before the district court on January 31, 1970, and the enrollment and grade structure as of March 23, 1970, under the district court's order.

The chart is based on the November 26, 1969, Report to the Court filed by defendants, the desegregation plans filed by the United States Office of Education on July 10, and December 1, 1969, the attendance zone maps and projected enrollments filed by defendants on December 1, 1969, the attendance zone maps and projected enrollments submitted by the United States on January 27, 1970, and the Attachment D1 to the affidavit of James McPherson filed in the district court on April 10, 1970. The latter data should reflect the assignments under the January 31 Order, as amended on February 4 and March 12.

Figures submitted by the Office of Education with its December 1, 1969, recommendations were in some aspects corrected during a January 22, 1970, conference with the Court and all parties. The chart reflects the corrected statistics.

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ENROLLMENTS UNDER DESEGREGATION PLANS AND THE DISTRICT COURT'S ORDERS

ELEMENTARY SCHOOLS

School			September 1969	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.[42]	Government Jan. 27 Plan	March 23 Attendance
Arlington Cap. 462	W	(1-5)	307	CLOSE	(1-5)[43] 350	(1-5)	737	160	CLOSED
	N		237		Council 659	Council 659	(3-5) (Morningside 1-2) 437 Tot. Cap. 1584	(1-5)	
Austin Cap. 396	W	(1-6)	396	---------[45]	331	331	311	396	----------[47]
	N		22		(1-5) 84	(1-5)	(4-5) (Old Shell Road 1-3) 139 Tot. Cap. 891	(1-6) 22	
Glenville Cap. 660	W	(1-6)	262	(1-6) 300	CONVERTED TO HIGH SCHOOL				(1-6) 300
	N		299	313					329
Frazier Cap. 1122	W	(1-6)	0	(1-5) 0	10	10	355	10	(1-5) 0
	N		1123	983	(1-5) 1022	(1-5) 1022	(3-5) (Ind. Springs 1-2) 812 Tot. Cap. 1551	(1-5) 1022	808
Caldwell Cap. 594	W	(1-6)	0	(1-6) 13	CLOSE	1	291	0	(1-6) 20
	N		314	401		(1-5) 404	(1-3) (South Brookley 4-5) 255 Tot. Cap. 1023	(1-5) 350	375
Chickasaw Cap. 627	W	(1-6)	494	(1-6) 500	473	473	311	473	(1-6) 500
	N		3	0	(1-5) 100	(1-5) 100	(1-2) (Robbins-Hamilton 3-5) 662 Tot. Cap. 2112	(1-5) 100	0
Council Cap. 561	W	(1-5)	0	(1-5) 6	(1-5)[46] 350	(1-5) 350	737	4	(1-5) 2
	N		481	525	Arl. 659	Arl. 659	(3-5) (Morningside 1-2) Arl. 437 Tot. Cap. 1584	(1-5) 391	543
Craighead Cap. 891	W	MIDDLE SCHOOL		(1-5) 383	CONVERTED TO HIGH SCHOOL			347	(1-5) 226
	N			512				(1-5) 489	560
Richton Cap. 759	W	(1-6)	507	(1-6) 518	(1-5) 438	(1-5) 436	481	439	460
	N		237	243	348	343	(3-5) (Shepard 1-2) 241 Tot. Cap. 1287	(1-5) 348	(1-6) 260

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[41] Under this plan two or more schools are paired in order to house one group of elementary students. This column indicates the particular grades ggested for the school, the schools which are to be included in the pairing, and the total capacity of the buildings. Where more than one school to be used for the one group of grades, the school other than the one in the left hand column will be shown in this column without parenthesis. e, e.g. Council.

[42] The total capacity for the Arlington-Council facilities is 1023.

[43] The Board's plan does not propose any change in the elementary and middle schools located west of I-65 and no enrollment projection statistics e available for those schools.

[44] Attachment D 1 to the affidavit of James McPherson which provides the basis for the March 23 attendance statistics does not show enrollment figure those schools west of I-65 not affected by the district court's order.

[45] See footnote 43.

School			September 1969	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.	Government Jan. 27 Plan	March 23 Attendance
Dickson Cap. 742	W	(1-6)	835	--------	680 (1-5)	680 (1-5)	195 (1-2) (Stanton Road 3-5) 534 Tot. Cap. 1714	835 (1-6)	--------
	N		193		125	125		193	
Dodge Cap. 793	W	(1-6)	675	--------	565 (1-5)	565 (1-5)	351 (1-2) (Williams 3, Owens 1-2) 506 Tot. Cap. 2674	675 (1-6)	---------
	N		65		45	45		65	
Eight Mile Cap. 660	W	(1-8)	506	--------	230 (1-6)	280 (1-6)	98 (1-2) (Grant 3-5) 250 Tot. Cap. 1848	280 (1-6)	--------
	N		110		66	66		66	
Emerson (Southside)[47] Cap. 696	W	(1-6)	4	16 (1-6)	CLOSE	3 (1-5)	CLOSE	CLOSED	
	N		354	340		518			
Fonde Cap. 825	W	(1-6)	679	--------	605 (1-5)	605 (1-5)	405 (1-2) (Palmer-Glendale 3-5) 450 Tot. Cap. 2112	679 (1-6)	--------
	N		11		236	11		161	
Fonvielle Cap. 1155	W	(1-6)	0	8 (1-6)	CONVERTED TO MIDDLE SCHOOL	0 (1-5)	400 (3-5) (Forest Hill 1-2) 666 Tot. Cap. 1815	0 (1-5)	3 (1-6)
	N		1209	1153		1000		1000	1175
Forest Hill Cap. 660	W	(1-5)	560	--------	586 (1-5)	586 (1-5)	204 (1-2) (Fonvielle 3-5) 334 Tot. Cap. 1815	560 (1-5)	--------
	N		0		355	0		95	
Glendale Cap. 693	W	(1-6)	503	444 (1-5)	434 (1-5)[48]	434 (1-5)	634 (3-5) (Fonde 1-2)	434 (1-5)	402 (1-5)
	N		149	206	Palmer 931	Palmer 931	Palmer 717 Tot. Cap. 2112	Palmer 913	188
Gorgas Cap. 850	W	(1-6)	2	8 (1-6)	7 (1-5)	3 (1-5)	449 (1-3) (Orchard 4-5) 441 Tot. Cap. 1597	7 (1-5)	2 (1-6)
	N		1153	1150	960	953		963	1171
Grant Cap. 1188	W	(1-5)	1	15 (1-5)	15 (1-5)	15 (1-5)	197 (3-5) (Eight Mile 1-2) 1101 Tot. Cap. 1848	15 (1-5)	1 (1-5)
	N		1274	1250	1285	1285		1285	1275

47/ The Emerson School building was apparently abandoned sometime during the 1969-70 school year and the children were moved to the old Southside Junior High School which the Board had closed in 1968 because of its condition. The capacity figure used for Emerson is the listed capacity for the Southside plant. The capacity of the Emerson School when it was used was 528.

48/ The total capacity for the Palmer-Glendale facilities is 1287.

School			September 1969	Board Plan		HEW Plan B		HEW Plan B-Alt.
Hall Cap. 1188	W	(1-6)	0	CONVERTED TO MIDDLE SCHOOL	(1-5)	483	(1-5)	483
	N		686			664		664
Hamilton Cap. 600	W	(1-6)	629	625	(1-5)[49]	638	(1-5)	638
	N		0	0	Robbins	855	Robbins	855
Howard Cap. 429	W	(1-6)	0	21	CLOSE		(1-5)	0
	N		447	465				465
Indian Springs Cap. 429	W	(1-6)	520	--------	(1-6)	535	(1-6)	535
	N		12			11		11
Lienkauf Cap. 495	W	(1-6)	268	258	(1-5)	273	(1-5)	273
	N		177	96		165		165
Maryvale Cap. 594	W	(1-6)	548	478	(1-5)	472	(1-5)	472
	N		55	130		145		15
Mertz Cap. 528	W	(1-6)	461	496	(1-5)	402	(1-5)	402
	N		0	0		120		0
Morningside Cap. 561	W	(1-6)	740	631	(1-5)	636	(1-5)	636
	N		0	0		120		0
Old Shell Road Cap. 495	W	(1-6)	249	250	(1-6)	232	(1-5)	232
	N		112	120		295		295
Orchard Cap. 792	W	(1-5)	754	--------	(1-5)	759	(1-5)	759
	N		113			125		117
Owens Cap. 1485	W	(1-6)	0	0	(1-5)	2	(1-5)	2
	N		1100	1237		1414		1414

49/ The total capacity for the Robbins-Hamilton facilities is 1485.

n	HEW Plan B-1 Alt.		Government Jan. 27 Plan		March 23 Amendment
	591				
	(1-3) (Maryvale 4-5)		MIDDLE SCHOOL		
	458 Tot. Cap. 1782				
	800		638		586
	(3-5) (Chickasaw 1-2)	(1-5)		(1-6)	
	Robbins 693 Tot. Cap. 2112	Robbins	855		0
					8
	CLOSE		CLOSE	(1-6)	
					410
	190		535		
	(1-2) (Brazier 3-5)	(1-5)		----------	
	221 Tot. Cap. 1551		11		
	273		273		176
	(5) (Westlawn 1-2, Hertz 3-4)	(1-5)		(1-5)	
	33 Tot. Cap. 1551		215		279
	380		414		479
	(4-5) (Hall 1-3)	(1-5)		(1-5)	
	236 Tot. Cap. 1782		167		167
	402		498		438
	(3-4) (Westlawn 1-2, Lienkauf 5)	(1-5)		(1-6)	
	66 Tot. Cap. 1551		104		0
	369		631		749
	(1-2) (Arlington-Council 3-5)	(1-5)		(1-6)	
	222 Tot. Cap. 1584		100		0
			232		269
	CLOSE	(1-5)		(1-6)	
			295		110
	313		754		
	(4-5) (Gorgas 1-3)	(1-5)		----------	
	639 Tot. Cap. 1815		113		
	184		2		0
	(4-6) (Dodge 1-2, Williams 3)	(1-5)		(1-6)	
	1100 Tot. Cap. 2674		1414		1328

School			September 1969	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.	Government Jan. 27 Plan	March 23 Attendance
Palmer Cap. 594	W	(1-5)	57	(1-5) 60	(1-5) 50/434	(1-5) 434	634 (3-5) (Fonde 1-2)	(1-5) 434	(1-5) 65
	N		674	660	Glen. 931	Glen. 931	Glen. 717 Tot. Cap. 2112	Glen. 931	610
Robbins Cap. 825	W	(1-5)	6	(1-5) 2	(1-5) 51/638	(1-5) 638	800 (3-5) (Chickasaw 1-2)	(1-5) 638	(1-5) 9
	N		815	805	Hamil. 855	Hamil. 855	Hamil. 693 Tot. Cap. 2112	Hamil. 855	841
Shepard Cap. 528	W	(1-6)	409	--------	(1-5) 383	(1-5)	410 (1-2) (Crichton 3-5)	(1-6) 409	--------
	N		29		160	43	150 Tot. Cap. 1287	29	
South Brookley Cap. 429	W	(1-6)	499	(1-6) 502	(1-6) 514	(1-6) 514	224 (4-5) (Caldwell 1-3)	(1-6) 502	(1-6) 501
	N		75	71	72	72	218 Tot. Cap. 1023	71	79
Stanton Road Cap. 990	W	(1-6)	0	(1-6) 14	(1-5) 6	(1-5) 6	491 (3-5) (Dickson 1-2)	(1-5) 6	(1-6) 1
	N		977	1077	900	900	491 Tot. Cap. 1717	900	984
Thomas Cap. 297	W	(1-6)	222	--------	(1-5) 180	(1-5) 180	123 (1-2) (Whitley 3-5)	(1-5) 180	--------
	N		101		95	95	235 Tot. Cap. 891	95	
Westlawn Cap. 528	W	(1-6)	516	(1-6) 483	(1-5) 495	(1-5) 495	495 (1-2) (Mertz 3-4, Lienkauf 5)	(1-5) 432	(1-6) 507
	N		0	0	75	0	66 Tot. Cap. 1551	50	0
Whistler Cap. 726	W	(1-6)	227	--------	(1-5) 181	(1-5) 181	462 (1-2) (Will 3-5)	(1-5) 181	--------
	N		231		205	205	178 Tot. Cap. 1518	205	
Whitley Cap. 594	W	(1-5)	0	(1-5) 0	(1-5) 216	(1-5) 216	273 (3-5) (Thomas 1-2)	(1-5) 216	(1-5) 0
	N		395	421	481	481	341 Tot. Cap. 891	481	388
Will Cap. 792	W	(1-5)	657	--------	(1-5) 678	(1-5) 678	397 (3-5) (Whistler 1-2)	(1-5) 657	--------
	N		175		395	355	422 Tot. Cap. 1518	175	
Williams Cap. 396	W	(1-6)	497	(1-6) 571	(1-6) 571	(1-6) 571	303 (3) (Dodge 1-2, Owens 4-6)	(1-6) 571	(1-6) 562
	N		60	43	43	43	225 Tot. Cap. 2674	43	56
Woodcock Cap. 594	W	(1-6)	239	(1-5) 249	CONVERTED TO MIDDLE SCHOOL		AS PART OF EANES	(1-5) 424	(1-5) 191
	N		119	170				217	203

50/ See footnote 48.

51/ See footnote 49.

MIDDLE SCHOOLS

School			September 1969	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.	Government Jan. 27 Plan	March 23 Attendance
Azalea Rd. Cap. 1015	W	(7-8)	1039	----------	(6-7) 857	(6-7) 857	----------[52]	(7-8) 1039	--------
	N		38		133	133		38	
Carver Cap. 1023	W	(6-7)	1	(6-8) 8	CONVERTED TO HIGH SCHOOL		----------	USED AS HIGH SCHOOL	(6-8) 0
	N		857	867					920
Central Cap. 1508	W		USED AS HIGH SCHOOL		[22] (6-9) 1044	(6-9) 1044	----------	(6-9) 468	USED AS HIGH SCHOOL
	N				1562	1562		1206	
Clark Cap. 1390	W	(7-9)	1089	(7-9) 1242	(8) 536	(8) 536	----------	(8) 536	(7-9) 1071
	N		203	278	948	948		948	267
Craighead Cap. 891	W	(6-7)	119	ELEMENTARY SCHOOL	CONVERTED TO HIGH SCHOOL		----------	USED AS ELEMENTARY SCHOOL	
	N		405						
Dunbar Cap. 1131	W	(7-8)	2	(7-8) 6	(6-9)[54] 1044	(6-9) 1044		(6-9) 181	(7-8) 4
	N		837	912	Central 1562	1562		985	806
Eanes Cap. 1218	W	(7-9)	966	(6-8) 911	(6-8) 930	(6-9)[55] 980	----------	(6-9)[56] 1292	(6-8) 994
	N		134	160	Wdck. 764	Wdck. 764		Hall 977	283
Fonvielle Cap. 1155	W		USED AS ELEMENTARY SCHOOL		[57] (6-9) 1040	USED AS	ELEMENTARY SCHOOL		
	N				Phil-Wash. 1562				
Hall Cap. 1188	W	(1-6)	0	(6-8) 182	USED AS ELEMENTARY SCHOOL			(6-9) 1292	(5-8) 137
	N		686	573				Eanes 977	817

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[52] Under Plan B-1 Alternative the same middle school and high school plans proposed in Plan B or Plan B-Alternative could be used. If Plan B were used, Toulminville would be substituted for Fonvielle as part of the Washington-Phillips middle school facility.

[53] The total capacity for the Dunbar-Central facilities is 2639.

[54] Ibid.

[55] Under Plans B and B-Alternative Eanes would be used with Woodcock as a middle School. The combined capacities of the two facilities would be 1812.

[56] The total capacity for the Eanes-Hall facilities is 2406.

[57] The total capacity for the Phillips-Washington-Fonvielle facilities is 3271.

School			September 1969	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.	Government Jan. 27 Plan	March 23 Attendance
Hillsdale Cap. 847	W	(6-8)	431	--------	(8) 858	(8) 858	----------	(6-8) 638	--------
	N		217		131	131		77	
Mob. Co. Tr. Cap. 1305	W	(6-12)	0	(6-12) 102	(6-7) 432	(6-7) 432	----------	(6-7) 432	(6-8) 2
	N		1283	1177	859	859		859	1188
Phillips Cap. 1073	W	(7-8)	752	(7-8) 861	(6-9) 58/ 1040	(6-9 1040	----------	(6-9) 59/ 1170	(7-8) 710
	N		122	171	Wash-Fon 1562	Wash-Fon 1562		Wash. 1716	176
Prichard Cap. 609	W	(6-9)	353	(6-8) 340	(6-7) 240	(6-7) 240	----------	(6-7) 240	(6-8) 308
	N		170	167	410	410		410	209
Main Cap. 986	W	(7-12)	1296	(7-12) 1150	(7-12) 1150	(7-12) 1150	----------	(7-12) 1150	(7-12) 1106
	N		112	97	97	97		97	116
Scarborough Cap. 1000	W	(6-8)	638	--------	(6-7) 855	(6-7) 855	----------	(6-8) 638	--------
	N		77		133	133		77	
Toulminville Cap. 609	W		USED AS HIGH SCHOOL			60/ (6-9) 1040	----------	USED AS HIGH SCHOOL	
	N					Fon-Phil. 1562			
Trinity Gard. Cap. 899	W	(7-12)	0	(6-8) 0	(6-7) 380	(6-7) 380	----------	(6-7) 380	(6-8) 0
	N		1084	992	690	690		690	964
Washington Cap. 1043	W	(7-9)	0	(7-9) 16	61/ (6-9) 1040	(6-9) 1040	----------	62/ (6-9) 1170	(7-9) 0
	N		1528	1559	Fon-Phil 1562	Phil-Toul 1562		Phillips 1716	1462
Williamson Cap. 1350	W	(8-12)	1	USED AS HIGH SCHOOL ONLY			----------	USED AS HIGH SCHOOL	
	N		1142						
Woodcock	W		USED AS ELEMENTARY SCHOOL		(6-9) 980	(6-9) 980			
	N				Eanes 764	Eanes 764			

58/ Ibid.

59/ The total capacity of the Phillips-Washington facilities is 2116.

60/ The total capacity of the Toulminville-Fonvielle-Phillips facilities is 2837.

61/ See footnote 57.

62/ See footnote 57.

HIGH SCHOOLS

School		September 1969	Board Plan	HEW Plan B	HEW Plan B-Alt.	HEW Plan B-1 Alt.	Government Jan. 27 Plan	March 23 Attendance
Bienville Cap. 660	W	USED AS ELEMENTARY SCHOOL		Blt-Carv[63/] 1908 (9-12) Vigor 2962	Blt-Carv 1908 (9-12) Vigor 3516	----------	(9-12)[64/] 1134 Vigor 1211	ELEMENTARY SCHOOL
	N							
Blount Cap. 1972	W	(8-12) 0	(9-12) 22	Vig-Bien 1908 (9-12) Carver 2962	Vig-Bien 1908 (9-12) Carver 3516	----------	(9-12)[65/] 854 Carver 1846	(9-12) 0 1748
	N	1893	1875					
Carver Cap. 1023	W	USED AS MIDDLE SCHOOL		Vig-Bien 1908 (9-12) Blount 2962	Vig-Bien 1908 (9-12) Blount 3516	----------	854 (9-12) Blount 1846	MIDDLE SCHOOL
	N							
Central Cap. 1508	W	(9-12) 0	(9-12) 17	CONVERTED TO MIDDLE SCHOOL		----------	MIDDLE SCHOOL	(9-12) 0 1254
	N	1470	1372					
Davidson Cap. 1972	W	(9-12) 2302	(9-12) 2150	(9-12) 1738	(9-12) 1738	----------	(9-12) 2302	(9-12) 2363
	N	72	70	604	51		72	73
Mobile Co. Tr. Cap. 1305	W	(6-12) 0	(6-12) 102	USED AS MIDDLE SCHOOL ONLY		----------	MIDDLE SCHOOL	(6-12) 2
	N	1283	1177					1188
Murphy Cap. 2913	W	(9-12) 2602	(9-12) 2171	(10-12) 1440	(10-12) 1440	----------	(10-12) 1643	(9-12) 2247
	N	239	425	1360	1913		1761	490
Rain Cap. 986	W	(7-12) 1296	(7-12) 1150	(7-12) 1150	(7-12) 1150	----------	(7-12) 1150	(7-12) 1106
	N	112	97	97	97		97	116
Shaw Cap. 1044	W	(9-12) 1242	(9-12) 1250	(9-12) 1150	(9-12) 1150	----------	(9-12) 1250	(9-12) 1179
	N	237	240	471	396		240	220
Toulminville Cap. 609	W	(10-12) 0	(10-12) 20	(12) 0	CONVERTED TO MIDDLE SCHOOL	----------	(10-12) 9	(10-12) 0
	N	1135	1145	365			940	1097
Vigor Cap. 1769	W	(10-12) 1504	(9-12) 1296	Blt-Carv 1908 (9-12) Bien. 1962	Blt-Carv 1908 (9-12) Bien. 3516	----------	(9-12) 1134 Bien. 1211	(9-12) 1474
	N	195	468					480
Williamson Cap. 1350	W	(8-12) 1	(9-12) 762	[66/]1008 (10-12) Craig. 767	1008 (10-12) Craig. 767	----------	880 (10-12) 471	(9-12) 625 90
	N	1142	474					

[63/] The total capacity of the Bienville-Blount-Carver-Vigor facilities is 5424.

[64/] The total capacity for the Vigor-Bienville facilities is 2241.

[65/] The total capacity for the Blount-Carver facilities is 2995.

[66/] The total capacity of the Williamson-Craighead facilities is 2241.

APPENDIX C

This appendix lists the non-contiguous or split attendance zones which were recommended or noted on the annual Pupil Placement Recommendations of school board (Appendix A to Trial Brief), except for the inclusion of a part of South Brookley in the Hall zone. The latter example is taken from the Report on Research Of The Pupil Placement Office For Use In Planning For The Full Utilization Of School Facilities In The Downtown Area (Appendix B to Trial Brief). In some instances not all grades are assigned from the split part of the zone, and in other cases only students of one race living in the split zone are assigned. The chart shows the area assigned to a school other than the one located in its geographic zone, the school to which it is assigned, and the approximate distance from the middle of the split area to the school to which it is assigned.

INSTANCES WHERE THE SCHOOL BOARD HAS ASSIGNED OR RECOMMENDED STUDENT ASSIGNMENT USING NON-CONTIGUOUS ZONES

Year	*Non-Contiguous Area Assigned*	*Distance between Area and School*	*School*
1963-64	Brookley Air Force Base	3.6 miles	Woodcock
	Owens	3.6 miles	Carver
	Highway 98	8.8 miles	Washington
	Whistler	1 mile	Whistler
	Highway 98	10 miles	Warren
	So. Morningside	5.1 miles	Oakdale
	Hillsdale	14.5 miles	St. Elmo
	Mobile Terrace	UNKNOWN	St. Elmo
	Brookley Air Force Base	9.5 miles	Theodore
	Highway 98	9.6 miles	Toulminville
1964-65	Highway 98	3.5 miles	Hillsdale
	Oakdale	2.2 miles	Barton
	Lee	4.5 miles	Ellicott
	Lee	7.8 miles	Gorgas
	So. Morningside	4.5 miles	Craighead
	Griggs	11.4 miles	Old Shell Rd.
	Indian Springs	9.8 miles	Prichard Jr. Hi.
	Whistler	3.4 miles	Prichard Jr. Hi.
	Shaw	16 miles	Tanner-Williams
	Shaw	10 miles	Semmes
	Shaw	10.8 miles	Barton
	Adams	2 miles	Blount High
	Fonvielle	1.9 miles	Palmer
	Highway 98 West	3.5 miles	Hillsdale
	Thomas	3.2 miles	Mobile Cty. Trng.
	So. Brookley	6.6 miles	Hall
	Owens	3.8 miles	Williamson Hi.
	Owens	4.1 miles	Hall
	Wolf Ridge Area	3.1 miles	Crichton
1965-66	Whitley	1.6 miles	Adams
	Mobile Co. Trng.	2 miles	Adams
	So. Morningside	4.5 miles	Craighead
	So. Brookley	7.4 miles	Craighead
1966-67	Gorgas	1.9 miles	Old Shell Rd.
	Gorgas	3.4 miles	Phillips
	Saraland-Satsuma	6.3 miles	Mobile Co. Trng.
	Cottage Hill	5.7 miles	Dickson
	Lloyd Station	3.8 miles	Hall
	Lloyd Station	4.1 miles	Williamson Hi.
	Austin	3.2 miles	Warren
	Austin	4.6 miles	Washington Hi.
	Austin	5.1 miles	Toulminville Hi.

APPENDIX D

This Appendix reflects the number of portable and permanent classrooms used or recommended at schools in the Mobile system between 1964 and 1968 where there were substantial portions of the total capacities housed in portable classes. The data were obtained from Pl. Ex. 22, 23 and Pl.-Int. Ex. 29 at the July 1967 Hearing and A. No. 26,886, Vol. I, pp. 90-94.

SCHOOLS WHICH HAVE HAD MAJOR PORTIONS OF THEIR STUDENTS HOUSED IN PORTABLES

Year	*School*	*Portable Classrooms*	*Permanent Classrooms*
1964–65	Burroughs	3	10
	Calcedeavor	3	8
	Cleveland	7	8
	Cottage Hill	1	3
	Council	5	18
	Dixon	7	5
	Fonde	7	14
	Forest Hill	6	20
	Griggs	12	16
	Hillsdale	24	0
	Hollinger's Island	4	12
	Mobile County	6	20
	Mobile County Training	11	19
	Morningside	5	15
	Mount Vernon Elementary	8	10
	Semmes	12	27
	Shepard	9	16
	Stanton Road	15	11
	Trinity Gardens	5	25
	Williamson	15	35
	20 Schools	165	292
1966–67	Baker	9	20
	Blount	14	38
	Calcedeavor	3	7
	Citronelle	18	33
	Cleveland	7	8
	Cottage Hill	2	2
	Council	7	17

SCHOOLS WHICH HAVE HAD MAJOR PORTIONS OF THEIR STUDENTS HOUSED IN PORTABLES (Continued)

Year	*School*	*Portable Classrooms*	*Permanent Classrooms*
1964–65 (Cont'd.)	Dixon	7	5
	Fonvielle	13	35
	Grant	10	36
	Griggs	10	16
	Hillsdale	7	15
	Hollinger's Island	5	12
	Mobile County High School	12	19
	Mobile County Training	17	18
	Morningside	7	15
	Mount Vernon Elementary	9	10
	Northside	8	13
	Palmer	7	17
	Shaw	7	16
	Shepard	17	16
	Thomas	4	8
	Vigor	8	29
	Washington	9	24
	24 Schools	211	429
1967–68	Baker	9	20
	Belsaw	10	10
	Blount	18	38
	Calcedeavor	3	7
	Cleveland	6	8
	Council	5	17
	Dixon	8	5
	Garc	1	0
	Griggs	11	16
	Hillsdale	8	15
	Hollinger's Island	4	12
	Howard	7	13
	Mobile County High School	15	19
	Mobile County Training	21	14
	Morningside	7	15
	Palmer	5	18
	Rain	8	14
	Satsuma	9	25
	Shaw	17	16
	Shepard	11	16
	Thomas	5	8
	Vigor	8	29
	Washington	10	24
	Williamson	10	18
	24 Schools	216	377

SCHOOLS WHICH HAVE HAD MAJOR PORTIONS OF THEIR STUDENTS HOUSED IN PORTABLES (Continued)

Year	*School*	*Portable Classrooms*	*Permanent Classrooms*
1968–69	Austin	3	12
	Azalea Road Jr. High	6	21
	Baker	10	21
	Belsaw Jr. High	9	10
	Blount High School	19	44
	Calcedeavor	4	5
	Griggs	12	18
	Gorgas	8	26
	Hillsdale High	8	15
	Hollinger's Island	4	12
	Howard Elementary	7	14
	Mobile County High School	18	19
	Morningside	7	15
	Palmer	7	18
	Rain	9	14
	Satsuma	12	25
	Shaw	15	24
	Thomas	5	9
	Toulminville	13	12
	Trinity Gardens	6	17
	Washington	15	24
	Williamson	17	7
	22 Schools	214	382

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 436

BIRDIE MAE DAVIS, ET AL., *Petitioners*,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL., *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENTS, MOBILE COUNTY COUNCIL PARENT-TEACHER ASSOCIATIONS, ET AL.

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 436

BIRDIE MAE DAVIS, ET AL., *Petitioners,*

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENTS, MOBILE COUNTY COUNCIL PARENT-TEACHER ASSOCIATIONS, ET AL

OPINIONS BELOW

The Petitioners' brief contains substantially all of the opinions and orders of the Courts below. Therefore, these Respondents will list only some of those orders which were omitted by Petitioners, as follows:

1. District Court order of January 22, 1970, granting these Respondents' Petition to Intervene in this case, unreported.

2. District Court order of July 28, 1970, establishing a Bi-Racial Committee, unreported.

3. District Court order of August 12, 1970, appointing Bi-Racial Committee, unreported.

4. District Court order of August 21, 1970, requiring School Board to report to the Court relative to its action on weekly student transfer requests, unreported.

QUESTIONS PRESENTED

Certiorari was granted by this Court to review the decisions of the Fifth Circuit Court of Appeals on June 8th, August 4th, and August 28th, 1970, which decisions serve as the basis for the school attendance zone plan of Mobile County, Alabama, for the school year 1970-71.

The Writ of Certiorari presents the following questions for consideration by this Court:

(1) Whether a student, black or white, is denied equal protection under the Fourteenth Amendment when such student is assigned to a school near his home within a desegregated, unitary system rather than a school within the system which is more distant from his home simply because of his race or color and to achieve a racial balance in such distant school, and

(2) Whether the above question in this case should be decided on its merits by this Court absent an evidentiary hearing and finding of fact by the District Court on which to base a decision on review?

STATEMENT

I. Preface

Respondents, MOBILE COUNTY COUNCIL PARENT-TEACHER ASSOCIATIONS, ET AL., hereafter referred to in brief as PTA, have reviewed the statement contained in Petitioners' brief filed in this cause and that contained in the brief to be filed in this Court by Respondent School Board. The PTA adopts those portions of the statement contained in Petitioners' brief, save and except those portions which are merely self-serving declarations and those which are purely argumentative, those portions which are inconsistent with and in conflict with the statement contained in brief of Respondent School Board and those portions of Petitioners' statement which are inconsistent with the statement contained hereinbelow.

II. Mobile Data

Geographically, Mobile County is rather large, containing approximately 1248 square miles covering a distance of approximately 53 miles north and south and 27 miles east and west. Likewise, the urban area of Mobile is rather large, containing approximately 155 square miles, measuring 18 miles from north to south and 11 miles from east to west.

A vast majority of the colored community live in a comparatively small area in the extreme eastern portion of urban Mobile. The Mobile County School Board played little or no part in the development of the colored community in the urban area of Mobile County. Schools came after people settled in these areas, not before.

III. School System Data

Attendance in the Mobile County Public Schools over the past five (5) years has decreased by approximately twelve (12%) per cent. During this period, the overall population of the County has increased slightly. It cannot be disputed that this litigation and the attendant chaos, turmoil and never-ending changes in attendance zone plans, attendance zones and student assignments have significantly contributed to the decision of students and parents to abandon the public schools. The toll has been felt among both blacks and whites. Enrollment has dropped from approximately 78,000 in 1965-66 to just over 68,000 in 1970-71.*[1] Over one-half of this loss occurred during the last few months. Also, during the past five (5) years, the public school children, black and white, of Mobile County, who have remained in the system have suffered greatly from the apparently interminable chaos and turmoil. A battery achievement test given within the system reflects a decline of approximately fifteen (15%) per cent in achievement level over this same five (5) years.*[2] Yes, it is the children who are suffering, not the real litigants, the NAACP and the School Board.

IV. Present Desegregation Plan in Operation

The Mobile County School System is now desegregated. Most of this was brought about in the last year. Ironically, there is no evidence before the Court depicting the present status of the Mobile County

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*[1] See statistical table of enrollment for 1965-66 school year and 1970-71 school year, Appendix to this brief, page 1a.

*[2] See statistical table of California Battery Test Scores 1965 through 1970 in Appendix to this brief, page 1b.

School System relative to desegregation which was obtained by evidentiary hearing. The only semblance of such evidence was submitted at the direction of the Court and adopted by the District Court on April 14, 1970 as supplementary findings of facts for the Court of Appeals.*[2]

The Mobile County Public School System has been totally desegregated as to administration and student body. An examination of the following statistical table will illustrate this point:

STATISTICAL TABLE

NAME OF SCHOOL	1970-71 STUDENTS ASSIGNED B	1970-71 STUDENTS ASSIGNED W	1970-71 FACULTY ASSIGNED B	1970-71 FACULTY ASSIGNED W	1970-71 ADMINISTRATORS ASSIGNED B	1970-71 ADMINISTRATORS ASSIGNED W
ADAMS (CLEVELAND)	293	687	16	25	1	1
ALBA	179	1463	25	38		2
AUSTIN	14	384	5	7		1
AZALEA ROAD	35	999	14	24		2
BAKER	94	984	14	26		2
BELSAW (MT. VERNON ELEMENTARY)	209	26	4	3	1	
BIENVILLE**[1]						
BLOUNT	1233	1041	36	41	2	1
BRAZIER	1006		14	17	1	
BROOKLEY	71	490	7	10		1
BURROUGHS	242	188	6	9	1	

**[1] By Court order, Bienville has become a part of the Blount High School Complex, which has an assigned enrollment of 1233 black, 1041 white.

*[2] District Court order of April 14, 1970, to be printed in the Appendix, with affidavit of School Administrator.

Name of School	1970-71 Students Assigned B	W	1970-71 Faculty Assigned B	W	1970-71 Administrators Assigned B	W
Calcedeaver*** 2		168	2	4		1
Caldwell	307	11	6	3	1	
Carver*** 3						
Central	1563	231	24	27	2	
Chickasaw	75	448	6	8		1
Citronelle	367	738	19	31		2
Clark	903	687	23	34		2
Council	404	50	6	8	1	
Craighead	516	242	11	16	1	
Crichton	144	352	7	11		1
Dauphin Island *** 4		20		1		1
Davidson	78	2562	37	66		3
Davis	176	613	9	16		1
Dickson	155	579	9	14		1
Dixon	181	239	5	6	1	
Dodge	62	670	10	14		1
Dunbar	940	86	14	13		2
Eanes	181	823	13	23		2
Eightmile	103	556	9	15		1
Evans	118	91	8	8		1
Fonde	8	662	8	13		1
Fonville	866	15	13	9	1	

*** 2 Calcedeaver is attended by a community of persons of entirely mixed bloodlines and is therefore considered bi-racial.

*** 3 By Court order, Carver has become part of the Blount High School Complex, which has an assigned enrollment of 1233 black, 1041 white.

*** 4 As will be noted, this is a small one teacher school, isolated on an island in the Gulf of Mexico.

Name of School	1970-71 Students Assigned B	W	1970-71 Faculty Assigned B	W	1970-71 Administrators Assigned B	W
Forest Hill		662	6	10		1
Glendale	574	257	10	14		1
Grand Bay	152	667	9	15		1
Grant	1077	7	16	9		
Griggs	40	899	11	17		1
Hall	852	190	18	23	1	1
Hamilton	204	414	7	11		1
Hillsdale	228	493	12	17	1	1
Hollinger's Island	4	391	5	7		1
Indian Springs	11	507	6	9		1
Lee	159	641	10	16		1
Leinkauf	252	194	6	8		1
Lott	132	413	8	11	1	
Maryvale	207	395	8	12		1
Mertz		373	4	7		1
Mobile County High	259	624	13	22		2
Mobile County Training	699	202	14	8	2	
Montgomery	30	815	10	24		2
Morningside		674	8	11		1
Mount Vernon	318	80	5	4		1
Murphy	1546	1054	31	58		3
Old Shell	357	117	5	6		1
Orchard	113	758	10	15		1
Owens	1479		20	13	1	
Palmer (Snug Harbor)	493	104	10	5	1	
Phillips	820	364	18	28		1

Name of School	1970-71 Students Assigned B	W	1970-71 Faculty Assigned B	W	1970-71 Administrators Assigned B	W
Prichard	566	187	12	19	1	1
Rain	111	1155	23	35		2
Robbins	702	129	9	12	1	
St. Elmo	49	426	8	11	1	1
Saraland	35	759	9	13		1
Satsuma	198	919	17	30		2
Scarborough	11	773	13	19		2
Semmes	23	989	13	23		2
Shaw	228	1293	21	38		2
Shepard	26	418	4	8		1
Stanton Road	894	4	13	17	1	
Tanner Williams	9	345	3	7		1
Theodore	339	1516	25	47		2
Thomas	74	160	3	5		1
Toulminville	454	247	12	14	2	
Trinty Gardens	969	171	15	17	2	
Vigor	1385	930	36	60	1	2
Washington	780	636	14	11	2	
Westlawn		322	4	7		1
Whistler	160	227	6	11		1
Whitley	345	127	6	7	1	
Will	160	652	7	13		1
Williams	41	533	8	11		1
Williamson	570	594	18	25	1	1
Wilmer	54	349	4	9		1
Woodcock	97	145	5	10		1

The Courts have examined several aspects of a school system to determine if it has been converted from a

dual system to a unitary, non-racial system. Faculty and staff; transportation; extra curricular activities and sports; facilities; school construction; consolidation and site selection; student transfer policy; and student body composition.* [4] The Mobile County School System has been converted from a dual school system of the early sixties to a unitary school system of today.

To accomplish this, the School Board has, at times, been required by the Courts to close schools, utilize facilities which are inadequate to accommodate assigned grade structures, and in some cases, underutilize facilities to accommodate assigned grade structures, gerrymander attendance zones in such a way that students of both races were required to bypass several existing schools more convenient to their homes in order to attend their assigned school, and pair schools which pairing has severely inconvenienced students of both races. All of the techniques and devices have been instituted and changed on numerous occasions throughout the school year to the utter dismay of the parents and teachers of both races. As a result, the 1969-70 school year ended in utter chaos and turmoil and the 1970-71 school year began on the same note.

(1) Faculty and Staff Conversion--

Faculty integration has increased sharply since August 1, 1966, when the Court first ordered faculty integration. At the conclusion of the 1968-69 school year, all but three of the ninety-one schools of the

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* [4] *Singleton* v. *Jackson Municipal Separate School District*, 419 F. 2d 1211 (5th Circuit, en banc, December, 1969); and *Ellis* v. *Board of Public Instruction of Orange County*, 432 F. 2d 203 (5th Circuit, 1970).

Mobile County School System had integrated faculties.*[5]

During the 1969-70 school year, every school in the system had a bi-racial faculty except one small school which had only one teacher.*[6] The statistical table on the preceding pages of this brief (pages 5-8), is a detailed presentation of the racial make-up of the faculty and school administrators assigned to the various schools in the system for the 1970-71 school year.

(2) Transportation

There are substantial numbers of school buses in operation by the School Board to transport students in the rural areas of the system, as well as a few buses to provide transportation for a small number of students residing in remote outlying areas of the urban part of the system.

Where transportation is provided, it serves specific geographic attendance zones approved by the Court of Appeals, *Singleton* v. *Jackson,* 419 F. 2d 1211, on a bi-racial and desegregated basis. School buses are routed in such a manner as to transport all students in each attendance zone to the school serving that zone on a bi-racial basis. The same quality and extent of transportation service is provided without regard to the race of the students living in the area served.*[7]

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*[5] Findings of Fact, October 13, 1969, paragraph 23; and Faculty Report to the District Court, December 3, 1968, respectively.

*[6] Findings of Fact, April 14, 1970. Attachment thereto.

*[7] Findings of Fact, April 14, 1970, pages 9-10; and see Petitioners' brief at page 6.

(3) Extra Curricular Activities and Sports

All extra curricular activities and sports under School Board control have been operated on a desegregated basis throughout the system for several years.* [8]

All athletic teams at every school are open to every student regardless of race. During the 1969-70 school year, several schools fielded bi-racial ball teams. In regular season play, and in tournament and play-off competition, events are conducted on a desegregated basis.* [9]

Bands and other musical groups, ROTC units, speech and other academically related competitions, clubs and organizations, school related social events, parent related activities such as Parent-Teacher Associations, and spectator events are desegregated.* [10]

(4) Services, Facilities and Programs

All facilities are made available to all schools in the system without regard to the racial composition of the schools. Within each individual school of the system, all facilities are made available to all students on an equal basis, regardless of race. These include: restrooms, lunchrooms, classrooms, laboratories, gymnasiums, libraries, laboratories, playing fields; and include services and programs such as band, orchestra, choral groups, clubs, counseling services, student governments, honor societies, publication staffs, intramural sports, assemblies, class elections and honors, parties and social events and every other facility, ac-

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* [8] Findings of Fact, October 13, 1969, paragraph 22 . . . and Findings of Fact, April 14, 1970, pages 14-15.

* [9] Findings of Fact, April 14, 1970, pages 14-15.

* [10] Findings of Fact, April 14, 1970, page 15.

tivity and program of every school.*[11] And actual participation on a bi-racial basis by students is substantial.*[12]

(5) Transfer Policy

The transfer policy now in use, including a majority to minority transfer provision, was formulated by the Court itself.*[13]

(6) Bi-Racial Committee

On August 4, 1970, the Court of Appeals recognized the real need for a bi-racial advisory committee. It said:

> "We are left with the feeling that this case would not again be here if the revisions had been considered by a bi-racial advisory committee. We directed in our decision of June 8, 1970 that the promulgation and maintenance of zone lines be a matter, among others, for consideration by the bi-racial committee."

On August 12, 1970, the District Court appointed a Bi-Racial Committee to advise and assist the School Board and the Court in the operation and maintenance of a unitary system. The Committee was made up of five black members and five white members.*[14]

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*[11] Findings of Fact, October 13, 1967, paragraph 22, and Findings of Fact; April 14, 1970, pages 16-18.

*[12] Findings of Fact, April 14, 1970, pages 17-18, and Report to the Court, February 24, 1970.

*[13] Findings of Fact, April 14, 1970, page 23.

*[14] At the request of Petitioners, the Court has enlarged the Committee to consist of seven black members and seven white members.

(7) Student Assignment

Every student in the system is assigned to a school within geographic attendance zones as ordered by the Courts. However, several elementary schools have been paired within zones for the 1970-71 school year. Reference is again made to the statistical tables at pages 5-8 of this brief. However, these Court ordered zones are not along the neighborhood school concept, nor may they be said to be educationally sound. They certainly are inconvenient to the students and parents, black and white, alike.

V. The Desegregation Process

There is little doubt that in the early 1960's a dual school system was operated in Mobile County. There is also little doubt that with persistent prods from the Courts, this situation has changed radically and in 1970 Mobile County is operating under a unitary school system.

Geographic attendance zones were drawn for the 1962-63 school year on racial bases with overlapping zones for the respective races. This is the era most dwelt on by Petitioner when reason is eluding them.

As a result of the action filed in the District Court, the School Board was directed by the Courts to begin the 1963-64 school year with desegregation of the system on a one grade a year stair-step plan.* [15] The Board commenced to comply with the Court's orders. Further relief was sought for the school year 1964-65, resulting in orders from the District Court and the

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* [15] *Davis* v. *Board of School Commissioners of Mobile County*, 318 F.2d 63; *Davis* v. *Board of School Commissioners of Mobile County*, 322 F.2d 356.

Court of Appeals, directing the Board to speed up the stair-step desegregation plan to two grades per year rather than one.* [16]

In accordance with the Court's order to eliminate dual attendance zones within the system, the Board did away with dual zones for the year 1965-66 by redrawing the zones but maintained the basic neighborhood school concept and produced a set of unitary zones with the option in the students to attend the school nearest their home.

On August 16, 1966, the Court of Appeals ordered the attendance plan modified.* [17] Among other changes, the student option was eliminated. The School Board began compliance with the Court order for further desegregation.

In March 1967, the United States Department of Justice was permitted by the District Court to intervene. The District Court held an exhaustive evidentiary hearing over a period of several weeks during July and August and found: * [18]

> (1) That there was no evidence of discrimination by race in the administration of the desegregation plan.
>
> (2) That all services, facilities, activities and programs of the school system are available to every student and to every school in the system,

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* [16] *Davis* v. *Board of School Commissioners of Mobile County*, 333 F.2d 53.

* [17] *Davis* v. *Board of School Commissioners of Mobile County*, 364 F.2d 896.

* [18] District Court order of October 13, 1967, reported at 12 Race Rel. L. Rep. 1820.

without reference to race, including: restrooms, lunchrooms, special facilities and equipment, athletic teams, bands and choral programs, clubs and student groups, counseling, honor societies, dances and other social activities.

(3) That the defendant had formulated a specific plan for faculty desegregation, had commenced faculty desegregation, and had made sufficient and proper effort in the prevailing circumstances.

(4) That all staff and staff activities are integrated.

(5) That the Board had instituted remedial programs for the benefit of black students in the system, receiving the commendation of the Office of Education of HEW.

(6) That the Board had voluntarily undertaken several school consolidations, resulting in the closing of all black schools and the consolidation of the black students into schools that were either all white or predominantly white.

(7) That the Board was following a policy of constructing, renovating and maintaining schools without regard to race.

(8) That furnishings, fixtures, equipment, facilities, textbooks, supplies, allocated funds and courses of study are allotted to all schools without regard to race.

(9) That no complaint had been made to the Court by anyone as to discriminatory action of the Board in administration of the desegregation plan.

The record discloses no subsequent findings of fact to the contrary on any of these particular points.

However, on March 12, 1968, the Court of Appeals returned the case to the District Court with instructions for the Court to order the School Board to redraw the attendance zone lines on what the school officials conceive to be a "nonracial basis".* [19]

Then, in July 1968, the Court held another evidentiary hearing where the Justice Department and the Petitioners presented their own separate proposed zone lines for the urban portion of the school system. This hearing resulted in a decree allowing the so-called "freedom-of-choice" in portions of the system.* [20]

On June 3, 1969, the Court of Appeals again reversed the District Court stating in part, that statistically, the desegregation in that portion of the system under freedom-of-choice was unacceptable.* [21]

The Court of Appeals remanded and directed the Court to request the Office of Education to collaborate with the School Board in the preparation of a revised plan of student assignment. The District Court did not have a hearing and the School Board filed affidavit testimony in the Court on July 29, 1969, in support of its objections to the plan submitted by HEW.* [22]

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* [19] *Davis* v. *Board of School Commissioners of Mobile County*, 393 F.2d 690, 696.

* [20] Decree of the District Court, July 29, 1968.

* [21] *Davis* v. *Board of School Commissioners of Mobile County*, 414 F.2d 609.

* [22] The Affidavit of James A. McPherson filed in the District Court on July 29, 1969.

The District Court entered its order on August 1, 1969, which rejected in part and accepted in part the respective recommendations of HEW and the School Board and delayed further desegregation east of the Interstate Highway 65 for one year. Petitioners appealed from the District Court order of August 1st. However, the Justice Department did not appeal. The Court of Appeals sustained the District Court order of August 1, 1969.*[23] Upon certiorari to this Court, the Court of Appeals was reversed, and the case remanded for further proceedings consistent with *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19.*[24]

Contrary to what is stated in Petitioners' brief (page 9), where PTA is referred to as a group of white parents who intervened ". . . to press for adoption of freedom of choice plans . . ." PTA is integrated; and PTA in its Petition advanced positions of (1) neighborhood zones and (2) antibussing to achieve racial balance, both of which are consistent with the equal protection clause of the Fourteenth Amendment. The Petition to intervene filed by PTA was not granted by the District Court until January 22, 1970, although it was filed six months earlier.*[25] The District Court on January 31, 1970, entered its Decree setting out attendance zone lines for implementation as soon as practicable in that urban portion of the system lying east of Interstate Highway 65, (All other areas in

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*[23] *Singleton* v. *Jackson Municipal Separate School District,* 419 F.2d 1211.

*[24] *Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290 (1970).

*[25] See Appendix of this case . . . District Court order of January 22, 1970.

the system were desegregated). This Decree also added a majority to minority transfer provision. By March 20, 1970, the School Board had completed implementation of the District Court order of January 31, 1970. Appeals were then filed by Petitioner and the Justice Department, and a cross appeal by the School Board. On April 14, 1970, supplemental findings of facts were made by the District Court. The School year ended in virtual chaos, confusion, boycotts by white and black students, massive absenteeism, racial disorders in some schools, large scale residential relocation, and upsurge of school vandalism, defiance of school authorities, the Court, and law enforcement officials by parents and students, and large scale disruption of the normal educational process in general. The relative calm of the hot summer came.

However, on July 8, 1970, the Court of Appeals, pending appeal, rendered an opinion setting forth a new plan of student assignment for that part of the urban portion of the school system lying *east* of Interstate Highway 65 which plan had been exhibited to the Court by the Justice Department.*[26] This plan called for "neighborhood" school zones with some stretching of that term and the zone lines to achieve racial balance.

And, on June 12, 1970, the District Court entered its order requiring the School to implement the new plan set out by the Court of Appeals and it was well publicized through the local media, including zone maps being printed.

On July 13, 1970, the District Court entered another order which, in essence, set out a still further and

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*[26] *Davis* v. *Board of School Commissioners of Mobile County*, 422 F.2d 1139 (1970).

different plan of student assignment for the area east of Interstate Highway 65, which also affected area elsewhere in the system. For the second time in five weeks, the public was advised that the school system was under an entirely new desegregation plan. These changes were also well publicized and zone maps were printed in the news media.

On July 30, 1970, the District Court entered still another order modifying over one-half of the attendance zones in the urban part of the system. These changes were likewise publicized with zone maps. Parents and students were justifiably confused.

On August 17, 1970, Petitioner filed a belated appeal and sought summary reversal.* [27] This point was raised to no avail by this counsel and School Board counsel.* [28]

Nevertheless, the Court of Appeals entertained the appeal and the motion. In fact, on August 24, 1970, a prehearing conference was held in Chambers by the Judge of that Court without notice to this counsel. This counsel had no knowledge of this conference and was not present.* [29]

On August 28, 1970, the Court of Appeals rendered an opinion which partially granted and partially denied the Motion For Summary Reversal, required certain further rearrangement of attendance zones within

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* [27] *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211, limited appeal time to fifteen (15) days.

* [28] Petition for Rehearing and For Stay, filed by the Intervenor, Mobile County Council PTA, on September 4, 1970; denied on September 18, 1970.

* [29] Affidavit of counsel attached to Petition for Rehearing and For Stay, filed by this Respondent on September 4, 1970.

the system. Again, with the opening of school only a few days off, the public was informed of the substantial rearrangement of attendance zones of the school system. Again, the local media carried the zone maps.

On September 9, 1970, the 1970-71 school year commenced amid the chaos of a plan of student assignment pieced together at various times by the District Court, HEW, a Justice Department attorney, the Court of Appeals, and who knows. In essence, this school year opened as the past year had closed; boycotts by black and white students and parents objecting to forced assignments, massive absenteeism, (first day enrollment 62,094, down approximately 11,400 from the end of school last year), defiance of school authorities, racial disorders in several of the schools, numerous arrests of students, and large scale disruption of the normal educational process.

Now the judgment of the Court of Appeals rendered on June 8, 1970, as amended by orders of that Court on August 4 and August 28, respectively, are before this Court on review. Public education in Mobile County, Alabama hangs in the balance.

V. Summary

The School system has now been fully and affirmatively desegregated in every aspect. The only complaint put forth in this review deals with student assignment within a part of the system. In that regard, the rural part of the system and the urban part of the system west of Interstate Highway 65 have been fully and affirmatively desegregated since September 1969 by the plan of student assignment for those respective parts devised by the District Court,

approved by the Court of Appeals, en banc, (*Singleton* v. *Jackson,* 419 F. 2d 1211) and reviewed by this Court on certiorari (*Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290 per currium, 1970). The method of student assignment used in each of these two approved parts of the system is unitary attendance zones drawn by the Court itself. The fault found by this Court earlier this year dealt primarily with the delay in implementation of a plan east of Interstate Highway 65.

Therefore, the principal issue now before this Court on review relates only to student assignment for that part of the urban portion of the system lying *east* of Interstate Highway 65.

The statistical table set out in an earlier section of this brief (pages 5-8) shows in detail the assignment of students for the whole system produced by the total desegregation plan the last part of which was placed in full implementation with the opening of school on September 9, 1970, pursuant to the Court of Appeals opinion of June 8, 1970, as subsequently amended by that Court.

Petitioners contention seems to be that despite the fact that this is a unitary school system, further action must be taken to achieve racial balance in each school within the system; and this abnormal action is justified because the School Board had, in years gone by, used certain techniques to maintain segregation which were justly condemned, and thus discontinued. When Petitioners' only justification for this abnormal action to achieve racial balance is to point to the shameful techniques used to maintain segregation in an era now dead, their true motive comes into question. Is it retribution?

SUMMARY OF ARGUMENT

I.

The plan for the Mobile County School System approved by the Court of Appeals is a "unitary system" and comports with the equal protection clause of the Fourteenth Amendment as applied to the children in the System. *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969), *Northcross* v. *Board of Education of Memphis,* 397 U.S. 232 (1970).

The plan in Mobile County has been measured by criteria suggested by the Court, i.e. composition of student bodies, faculty, staff, transportation, extracurricular activities and facilities. *Green* v. *County School Board of New Kent County,* 391 U.S. 430 (1968), *Ellis* v. *Board of Public Instruction of Orange County, Florida,* 423 F.2d 203 (1970), *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., No. 29,332, slip opinions dated June 8, August 4, and August 28, 1970.

The sole test of a unitary desegregated school system should not be "the achievement of specified ratios". A school system of the urban-rural type such as Mobile County with large, densely populated urban area and a wide variety of peoples, cannot be administered in a rigid, inflexible manner. *U.S.* v. *Montgomery County Board of Education,* 395 U.S. 225 (1969).

Desegregation does not require racial balance in each classroom, grade and school. If a child attends a school in a "unitary school system" he has been accorded the guarantees due him by the Constitution. *Brown* v. *Board of Education,* 347 U.S. 483 (1954), and *Green* v. *County School Board of New Kent County,* supra. To go further than is Constitutionally sanctioned and

require racial balance in schools, grades, and classes may well result in resegregation in Mobile County as well as many other parts of the South. The dual school system has been abolished in Mobile County, and the present Appellate Court ordered plan here on review which requires assignment of children to the schools within the system goes beyond the requirements of the Fourteenth Amendment and the cases of *Brown, Alexander* and *Northcross,* supra.

II.

Racial balancing as advocated by Petitioners is not constitutionally permissible. The right guaranteed by the Fourteenth Amendment is a personal, present and unqualified constitutional right to be neither excluded from a particular school within a system because of race, nor required to attend a particular school because of race. *Brown* v. *Board of Education,* 347 U.S. 483 (1954).

The position urged by Petitioners would require the assignment of children to public schools *solely* on the basis of their race. The Constitution imposes no such duty on the States. *Deal* v. *Cincinnati Board of Education,* 419 F.2d 1387 (6th Cir. 1969), *U.S.* v. *Jefferson County Board of Education,* 380 F.2d 385 (5th Cir. 1967), per curiam opinion. Therein at pages 405-406 the Court said:

> "When our concepts as to proportions and percentages are imposed on school systems, notwithstanding free choices actually made, we have destroyed freedom and liberty by judicial fiat; and even worse, we have done so in the very name of that liberty and freedom we so avidly . . . embrace."

Petitioners in brief simply misapply the Constitutional imperatives of the prior mandates of this Court. Their call for a student assignment criteria based solely on race clearly violates the Fourteenth Amendment. Their justification, as you may, stems from the fact that segregationists violated the Constitution to achieve segregation. Petitioners "are not the only children who have Constitutional rights." *Deal* v. *Cincinnati Board of Education,* 419 F.2d 1387 (6th Cir. 1969).

Mobile County school system covers a vast and diverse area and to require racial balancing, quotas, or ratios would violate the Constitutional personal rights of many school children (i.e. the right not to be excluded from or forced to attend a particular school solely on the basis of race). *Alexander,* supra, and *Northcross,* supra.

III.

Petitioners misconstrued the mandates of this Court in urging that "*Every* black child is to be free from assignment to a 'black' school . . . at every grade of his education." *Brown I, Brown II, Green,* and other recent cases.

The test, i.e. absolute unworkability, Petitioners suggest in evaluating a school to determine whether it is complying with the general principle above stated is a rigid, inflexible rule that is neither Constitutionally required nor educationally sound. In reality it is a blanket requirement for precise racial balance. No school board could carry the burden of proof this test implies in this day and age. With modern technology and sufficient funds, very little is "absolutely unworkable".

The principles Petitioner urge are unrealistic, unworkable, and will lead to further tumult and chaos in southern schools.

PTA urges adoption of a set of legal principles consistent with the Constitutional definition of "desegregation" found at Section 2000c(b) of Title 42, U.S.C.A. These principles would protect all children, regardless of race, from assignment to any school solely on the basis of their race.

ARGUMENT

I.

THE PLAN FOR THE MOBILE COUNTY SCHOOL SYSTEM BEFORE THIS COURT FOR REVIEW ON WRIT OF CERTIORARI FROM THE COURT OF APPEALS PROMULGATES A "UNITARY SCHOOL SYSTEM" WHICH DOES NOT DENY NEGRO CHILDREN EQUAL PROTECTION OF THE LAWS.

Based on the factual and statistical data contained in this brief and that of Respondent School Board, it is submitted that the plan approved by the orders of the Court of Appeals now on review before this Court in effect in Mobile County has resulted in a "unitary system".

This Court in *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19, 20, 90 S. Ct. 29, 30, 24 L. Ed. 2d 19, 21 (1969), has defined a "unitary school system" as one in which "no person is effectively excluded from *any* school *because* of race or color." (Emphasis supplied). See also the concurring opinion of the Chief Justice Burger in *Northcross* v. *Board of Education of Memphis,* 397 U.S. 232, 25 L. Ed. 2d 246, 250-251 (1970).

In *Green* v. *County School Board of New Kent County,* 391 U.S. 430, 20 L. Ed. 2d 716, 722, 88 S. Ct.

1689 (1968), this Court, in evaluating a system that had separate "white" and "negro" schools as did the dual system before the Court in *Brown I*, said,

> "Racial identification of the system's schools was complete, extending not just to the composition of student bodies at the two schools, but to every facet of school operations—faculty, staff, transportation, extra curricular activities and facilities."

The Fifth Circuit Court of Appeals in *Ellis* v. *Board of Public Instruction of Orange County, Florida*, 423 F.2d 203, 204 (1970), construed this paragraph as containing appropriate criteria by which to evaluate a school system in determining whether it is in fact a "unitary system".

Mobile is operating a unitary system when measured by these criteria. The system has literally been "drawn and measured" by the Courts at one level or another.[* 30]

The Court of Appeals in its order of June 8, 1970 corrected the remaining deficiencies with regard to

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[* 30] *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1969, 419 F. 2d 1211 (en banc consideration of Mobile case and 12 additional school desegregation cases); *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1969, 414 F.2d 609; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1968, 393 F. 2d 690; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1966, 364 F. 2d 896; *Davis* v. *Board of School Commissioners of Mobile County*, Ala., 5 Cir., 1964, 333 F. 2d 53; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1963, 322 F. 2d 256; *Davis* v. *Board of School Commissioners of Mobile County*, Ala., 5 Cir., 318 F. 2d 63; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., 1970, 422 F. 2d 1139; *Davis* v. *Board of School Commissioners of Mobile County, Ala.*, 5 Cir., No. 29,332, slip opinions dated June 8, August 4, and August 28, 1970.

faculty and staff by directing the District Court "to require strict compliance with the *Singleton* v. *Jackson* rule for faculty and staff on or before July 1, 1970." As the statistical data contained herein (pages 5-8 of this brief) and in the brief of the Respondent School Board indicates, there has been substantial compliance. Substantial compliance is all that is required. *Green* v. *County School Board of New Kent County,* 391 U.S. 430 (1968); *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969); *Singleton* v. *Jackson,* 419 F.2d 1211; and *Ellis* v. *Board of Public Instruction of Orange County,* 423 F.2d 203.

As this Court has said regarding faculty and staff consist, "Compliance should not be tested solely by the achievement of specified ratios." *U.S.* v. *Montgomery County Board of Education,* 395 U.S. 225, 23 L. Ed. 2d 263, 272 (1969). In the light of this decision, it becomes clear that the sixty (60%) per cent white and forty (40%) per cent black ratio of faculty and staff imposed on Mobile County by the Fifth Circuit Court and by the District Court is a "rigid or inflexible" ratio not heretofore sanctioned by this Court. There is no place for such rigidity or inflexibility in the administration of a school system such as the one of Mobile County. The size of the County (1258 square miles), the variety of her people, the differences in the educational needs at each school, and the overall complexity of an urban-rural system combine to make flexibility a must in responding to the educational needs of the children. Today, chances are that southern school boards that fail to achieve the precise ratio of Negro to white faculty or staff is presumptively in non-compliance with some court order. The result is that school administrators are more concerned with

racial balances than with education. That seems to be the case at least in Mobile County where the results of a standard achievement test indicates that the level of the attainment of students tested systemwide is now approximately fifteen (15%) per cent lower than five (5) years ago. (See appendix page 1b).

As to transportation, facilities, and extracurricular activities, the Circuit Court in its order of June 8, 1970, (slip opinion, page 6) noted that "The facts also demonstrate that all extracurricular activities and facilities are operated on the same basis. Indeed there is no complaint regarding transportation, facilities and extracurricular activities." Despite this, the Appellate Court directed the District Court "to enter an order requiring the continued desegregation of facilities and extracurricular activities and to include the requirements of *Singleton* v. *Jackson,* supra, as to transportation, school construction and school site selection as a part of the order." In its order of June 12, 1970, the District Court directed the School Board to comply.

The plan for student assignment on review in this Court was approved by the Fifth Circuit Court in three orders entered this summer. In its June 8, order, it approved the Department of Justice plan as modified. In so doing, the Court (at page 8, slip opinion) said,

> "We conclude that the Department of Justice plan, as hereinafter modified, must be invoked. By way of modification, it will be necessary to desegregate the one all Negro high school—Toulminville. It appears from maps of record that the zone line between Murphy high and Toulminville high can be redrawn so as to include some of the students living in the area of the Crichton elementary school. Some of these students appear to reside nearer Toulminville than Murphy. In addition,

the Department of Justice plan must be modified to close the Emerson elementary school (soon to be eliminated in an urban renewal project). This school would have an all Negro student body under the Justice Department Plan. The 450 students who would be assigned to Emerson are to be assigned as follows: 200 to Council, 200 to Caldwell and 50 to Lienkauf.

"This will leave only 8 Negro student body schools (all elementary), with 25 per cent of the Negro students assigned thereto (7,725 instead of 18,623), and every Negro child in the Mobile system will attend school in a desegregated junior high and high school on a *neighborhood basis.*" (Emphasis supplied).

In explaining the continued existence of a number of all negro schools, the Court of Appeals said, (slip opinion pages 9-10):

"From the standpoint of demography, a majority of the Negro population in the Mobile School system is situated in a concentrated area within the City of Mobile to the east of Highway I-65. The all Negro student body schools which will be left after the implementation of the Department of Justice plan as modified, are the result of neighborhood patterns. This condition can be further alleviated through a majority to minority transfer policy and through the functioning of a biracial committee. The student assignments in the school system depend on zone lines which are drawn on a discretionary basis and therefore may be subject, in some instances, to abuse and in other, to improvement. The proper administration of zone lines depends upon good faith in establishing and maintaining the lines as well as continuing supervision over them."

A biracial committee has been appointed by the District Court and is functioning, as directed by the Court

of Appeals by order of June 8, 1970, (slip opinion, page 10):

> "The district judge is also directed to require that the biracial committee serve in an advisory capacity to the school board in the areas of operation of the majority to minority transfer rule, the promulgation and maintenance of zone lines, and in school site location."

In addition, the District Court was "directed to require the majority to minority transfer rule of *Ellis* v. *Orange County*. All transferring students must be given transportation if they desire it and the transferee is to be given priority for space."

The District Court in its order of July 13, 1970, directed the School Board to implement this plan after making corrections occasioned by statistical inaccuracies. When the matter was again reviewed by the Appellate Court on August 4, 1970, these revisions were found acceptable, save for the pairing of three (3) sets of schools.

On July 30, 1970, the District Court again revised the plan which revisions were affirmed in part and reversed in part by the Appellate Court in its order of August 28, 1970. The result then is an approved unitary, non-racial plan of student assignment.

We submit that Mobile has a unitary school system.

Petitioners' position in short seems to be that "desegregation" means that each classroom of each school will contain the same ratio of Negro to white students as the ratio of Negro students to white students in the system as a whole. This concept of the term is inconsistent with that of Congress:

> " 'Desegregation' means the assignment of students to public schools and within such schools

> without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance." * [31]

Similarly, this Court has elaborated on the right of a Negro child and the obligation of the State to such child under the Fourteenth Amendment. *Brown I* held that States which maintain *dual* school systems deprive Negro children of the equal protection of the laws. *Brown II* placed the affirmative duty on the States to eliminate such *dual* school systems. The emphasis in these decisions is on the *dual* nature of the *systems.* In *Green* v. *County School Board of New Kent County,* 391 U.S. 430, (1968); this Court said:

> "It was such dual *systems* that 14 years ago *Brown I* held unconstitutional and a year later *Brown II* held must be abolished; school boards operating such school systems were required by *Brown II* 'to effectuate a transition to a *racially nondiscriminatory school system*' . . . " *Id.* at 435. (Emphasis added).
>
> ". . . *Brown II* commanded the abolition of such dual systems . . ." *Id.* at 437. (Emphasis added).
>
> "School Boards such as the Respondent then operating State-compelled dual systems were nevertheless clearly charged with the affirmative duty . . . to convert to a *unitary system* in which racial discrimination would be eliminated root and branch . . . . The constitutional rights of Negro school children articulated in *Brown I* permit no less than this . . . " *Id.* at 437-38. (Emphasis added).

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* [31] The Civil Rights Act of 1964, Pub. Law. 88-352, Title IV, Section 401; 78 Stat, 246, 42 USCA (Chapter 21) Section 2000c(b), in part.

More recently, this Court has defined the constitutional requisite of a unitary school system as one "within which no person is to be effectively excluded from any school because of race or color". *Alexander* v. *Holmes,* 396 U.S. 19, 20, 24 L. Ed. 2d 19 (1969). This definition requires consideration of the system as a whole.

If, in viewing the system as a whole, no child is "effectively excluded because of race or color," then the system is unitary and constitutionally sound, or the concluding language of both directives of *Alexander* does not mean what it says.

There is no real comparison between the Mobile County school system and the *dual* systems before the Court in *Brown I* and *Green.* Mobile County is operating a "unitary system". Each school is not precisely racially balanced and this is the apparent goal of the Petitioners. In their zeal to reach this goal of total integration, (i.e. integration based on a strict ratio of Negro to white in a given community or school district), Petitioners are effectively diminishing any real possibility for permanent integration.

It has been said that "to have any permanent integration, you cannot have too much . . ." * [32]

To achieve total integration (balancing), the goal of the Petitioners, mass cross-bussing of children within the system is sought by Petitioners. Their justification is that "southern school boards" bussed children in the past for the "immoral" purpose of maintaining a *dual* system, therefore, bussing should

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* [32] T. W. Thaggard, Jr., "The Making of a Civil Rights Case: Jones v. Alfred H. Mayer Company", 30 Alabama Lawyer 438, 457 (1969).

be utilized for what Petitioners consider a "moral" purpose, of attaining racial balance.

The Court of Appeals order here on review sought through gerrymandering to achieve in as many schools as possible a maximum racial mix. By doing so, the Court of Appeals proposal exceeds Constitutional imperatives. The compulsion of court orders cannot be employed to coerce a public school system to do what the Constitution clearly does not require.

The Court of Appeals approved plan is reinforced by majority to minority transfers to promote stable desegregation, prevent resegregation, and afford blacks that remain in the few remaining predominately black schools an opportunity to attend a predominately white school with free transportation to accomplish this move. The teachers under its plan at each school are assigned on a ratio of 60% to 40% which is the ratio of white to black teachers in the entire system. The staff, extracurricular activities, transportation, facilities, programs and other facets of the system under its plan are nondiscriminatory and thoroughly desegregated. The Court of Appeals plan effectively establishes a unitary system. Therefore, Petitioners' insist on a proposal designed to racially balance each school, with the consequent bussing and movement of children that the school board considers unnecessary, impractical, costly, disruptive, educationally unsound and not required by the Constitution.

To seriously propose racial balance in each classroom and each school is to ask the Court to ignore reality.

If this Court sanctions racial balance, achieved by mass cross-bussing of children, the result will be reseg-

regated school systems. Simply stated, the whites will flee. As we have shown, the withdrawal process has already started. (Appendix hereto, page 1a). It is the sincere hope of PTA that public education can survive in Mobile County and in other parts of the South. This hope will become a reality if this Court meant what was said in *Alexander* v. *Holmes, supra,* that "no person is to be effectively excluded from any school because of race or color". It is respectfully suggested that public education cannot survive if the great majority of the people withdraw their support. The special responsibility of this Court is to make "the great generalities of the Constitution" * [33] correspond with reality.

II.

THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT PROHIBITS RACIAL EXCLUSIONS BY ENFORCED SCHOOL ATTENDANCE TO ACHIEVE ANY PARTICULAR BALANCE, QUOTA, OR PERCENTAGE RATIO ON THE BASIS OF RACE IN ANY MOBILE COUNTY PUBLIC SCHOOL.

All the parties and the Courts, at all levels, should agree that every child, regardless of race, attending the Mobile County Public schools, has a personal, present and unqualified constitutional right to be neither excluded from a particular school within the system because of his race, nor required to attend a particular school because of his race. *Brown* v. *Board of Education,* 347 U.S. 483 (1954). In *Brown I,* supra, p. 494-495, this Court in recognizing that right, explained:

> "To separate them from others of similar age and qualifications *solely* because of their race generates a feeling of inferiority as to their status in the

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* [33] Benjamin J. Cardozo, "The Nature of the Judicial Process", (Yale ed. 1921) 17, 76.

> community that may affect their hearts and minds in a way unlikely ever to be undone." (Emphasis supplied).

In *Brown I,* the rationale was that state-compelled segregation according to race engenders feelings of inferiority in black students which precluded the possibility of "equal educational opportunity". In other words, "equal educational opportunity" was and is the right of every child which is protected by the Fourteenth Amendment.

The lack of wisdom in the forcible mixing of the races for that sake only is ably voiced by Mr. Vermont Royster in THE NATIONAL OBSERVER, March 9, 1970 edition, in his article entitled "The Immorality of Forced School Integration". Mr. Royster made the following observation:

> "There are many things wrong with the forcible transfer of children from school to school to obtain the 'proper' racial mix. It is, for one thing, wasteful of time, energy, and money that could better be applied to making all schools better.
>
> "To this practical objection there is also the fact that in concept it is arrogant. The unspoken idea it rests upon is that black children will somehow gain from putting their black skins near to white skins. This is the reverse coin of the worst segregationists' idea that somehow the white children will suffer from putting their white skins near to black skins.
>
> "Both are insolent assertions of white superiority. Both spring from the same bitter seed."

Indeed, it is ironic that the proponents of "civil rights" find it not only necessary, but desirable and Constitutionally justifiable, to apply the same uncon-

stitutional devices and rationale used by the most ardent segregationists in their quest to accomplish a desegregated, nonracial public school system.

Petitioners brief is permeated and largely supported by the rationale that the condemned "techniques of segregation" are constitutionally accepted devices to achieve an end of racial mixing, which is misconstrued by Petitioners as desegregation. On page 54 of brief, Petitioners ennumerate these techniques which were used to establish a dual school system as follows:

> ". . . school board decisions relating to school site selection, the determination of building sizes and capacities (including the use of portable classrooms) grade structures, optional zones, non-contiguous zones, and bussing were all adjusted to create neighborhoods of convenience with the structure of the legally established dual school systems."

Petitioners now press the use of these same discriminatory techniques and devices to achieve racial balance by assignment of children in Mobile County to respective schools *solely* on the basis of race. And at pages 69-70 of their brief they argue:

> "The Mobile board has made extensive use during very recent years of non-contiguous or split attendance zones with pupils transported outside their neighborhoods to promote racial segregation. The HEW plan urged by Petitioners in the Court below (Plan B-1 Alternate) would integrate all schools in Mobile by use of transportation and facilities and techniques of the *same kind* used by the Mobile board to keep the system rigidly segregated." (Emphasis added).

Petitioners are not bothered with the fact that their goal of complete integration and mixing of the races

would require the assignment of children to public schools *solely* on the basis of their race. In fact, Petitioners, in brief, promote almost every scheme imaginable to achieve racial balance by assigning children to the various schools within the Mobile School System *solely* on the basis of their race.* [34]

Congress, in the Civil Rights Act of 1964, 42 U.S.C. 2000c(b), enacted the following:

> "(b 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance."

And, Congress attempted to further avoid unconstitutional application of this "civil rights" legislation by enacting at Title 42, Section 2000c-6(a), the following:

> ". . . provided that nothing herein shall empower any official or Court of the United States to issue any order seeking to achieve a *racial balance* in *any* school by requiring the transportation of pupils or students from one school to another . . ." (Emphasis supplied).

In *Northcross* v. *Board of Education of Memphis,* 397 U.S. 232, 25 L.Ed.2d 246, (1970), Mr. Chief Justice Burger, in his separate concurring opinion restated the definition of a "unitary system" as set forth by this Court in *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19, 24 L.Ed. 2d 19, 90 S.Ct. 29 (1969), as one "within which no person is to be effectively excluded from any school because of race or

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* [34] Example given by Petitioners in brief, page 70.

color". He further recognized the fact that this Court has not ennunciated ". . . whether, as a constitutional matter, any particular racial balance must be achieved in the schools; . . . (and) to what extent transportation may or must not be provided to achieve the ends sought by prior holdings of the Court."

The point now at issue is whether the judiciary will force the board to infringe upon the individual constitutional rights of the school children of this county and their parents—black and white—not to be assigned to schools *solely* on the basis of the color of their skin. To require compulsory assignment as sought by Petitioners exceeds any Constitutional requirement, and *solely* on account of their race, exclude children from attending nearby schools.

Deal v. *Cincinnati Board of Education,* 419 F.2d 1387 (6th Cir. 1969) addressed itself to this matter:

> "It is the contention of the appellants that the Board owed them a duty to bus white and Negro children away from the districts of their residences in order that the racial complexion would be balanced in each of the many public schools in Cincinnati. It is submitted that the Constitution imposes no such duty. Appellants are not the only children *who have constitutional rights.* There are Negro, as well as white, children who may not want to be bussed away from the school districts of their residences, and they have just as much right to attend school in the area where they live. They ought not be forced against their will to travel out of their neighborhoods in order to mix the races." (Emphasis added).

The Mobile County School System covers a very large geographical area, approximately 1258 square miles. This is one of the largest school systems in the

country, geographically. It is made up of vast rural areas and a single urban area. The school children are not distributed on a prorata racial basis throughout the system. To further examine the facts, we note that the urban Mobile area of the system contains a majority of the school children. However, the urban area of the system, containing approximately 155 square miles, is rather large.

This urban area of the Mobile system is nestled on the west bank of Mobile Bay and Mobile River on the east side of the entire county system. Within the extreme easternmost part of the urban area of the school system live the vast majority of the black children in the school system. In other words, the black school children of Mobile live largely in a relatively small, densely populated area on the extreme eastern edge of the urban portion of the system.

The present attendance zones of the school system were drawn by the courts. These zones now require many school children of both races to bypass one or more otherwise available schools to reach their respective assigned schools solely to achieve racial balance. The equal protection clause of the Fourteenth Amendment does not require even that which has been done in the Mobile County School System by the Courts. Certainly, it does not require the more radical devices advanced by the Petitioners under the guise of "civil rights".

For these reasons, among others, we think that the correct answer to the question is that racial balancing, quotas or ratios as a means to bring about enforced biracial student bodies in the public school system of Mobile County have no place. These means are inappropriate and not reasonably related to the legi-

timate ends of equal educational opportunity as required by the Fourteenth Amendment and *Brown I.* What have we gained, if, in attempting to secure equal educational opportunity for all school children, regardless of race, we violate the equal protection clause of the Fourteenth Amendment with relation to children of both races?

This question has been touched on by the Fifth Circuit in the case of *United States* v. *Jefferson County Board of Education,* 380 F.2d 385 (5th Cir., 1967).

In *Jefferson County,* supra, the Court spoke on the subject (at 404-406):

> "... There must be a mixing of the races according to majority philosphy *even* if such mixing can only be achieved under the lash of compulsion ... Accordingly, while professing to vouchsafe freedom and liberty to Negro children, they have *destroyed* the freedom and liberty of *all* students, Negro and white alike. There must be a mixing of the races, or integration at all costs, or the plan does not work according to the opinion. Such has not been and is not now the spirit or the letter of the law ... When our concepts as to proportions and percentages are imposed on school systems, notwithstanding free choices actually made, *we have destroyed freedom and liberty by judicial fiat; and even worse, we have done so in the very name of that liberty and freedom we so avidly ... embrace.* (Emphasis added).

And, in *Jefferson County,* supra, Judge Bell in his dissenting opinion saw the problem (p. 411),

> "Then there is the matter of personal liberty. Under our system of government, it is not to be restricted except where necessary, in balance, to give others their liberty, and to attain order so

> that all may enjoy their liberty. History records that sumptuary laws have been largely unobserved because they failed to recognize or were needlessly restrictive of personal liberty . . . They (the majority opinion) *cast a long shadow over personal liberty as it embraces freedom of association and a free society.* They do little for the cause of education." (Emphasis added).

Petitioners' contentions and promulgations are based on the premise that balancing of the races in each of the Mobile County schools is the objective. Those contentions and objectives contravene the prohibition of the Civil Rights Act of 1964,* [35] and the Constitution of the United States.* [36] The imposition of racial quota, percentage or number requirements sought by Petitioners would be a complete denial of the Fourteenth Amendment personal right ennunciated by *Brown I.*

It is no less a denial of that Constitutional right when it is accomplished by the Courts, by simple conversion of this personal Constitutional right into a personal Constitutional duty to attend by compulsion a school to which one has been assigned solely and exclusively because of his race. Is this "equal protection of the laws"? The tragedy of our times is that this question even had to be asked in the highest court in the Land of the Free.

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* [35] Civil Rights Act of 1964, 42 U.S.C. 2000c.(b) and 2000c-6(a).

* [36] U.S. Constitution, Amendment XIV, Section I.

III.

DECLARATION OF LEGAL PRINCIPLES SOUGHT TO BE ENUNCIATED AS APPLICABLE TO THE MOBILE COUNTY SCHOOL SYSTEM.

Petitioners in an effort to have this Court declare legal principles applicable to the Mobile County School System state as their goal,

> ". . . to bring *dual* systems into compliance with the Constitution",

and ask this Court to declare certain legal principles, namely:

> "*Every* black child is to be free from assignment to a 'black' school—an identifiable racial minority school—at every grade of his education. We would define 'identifiable racial majority schools' as those which by reason of a very considerable racial concentration or racial disproportion are conceived as designed to receive black children." (page 63 of Petitioners' brief).

> "We believe that the only excuse from the general principle stated should be the case of absolute unworkability . . . or any proposal for eliminating the black schools. The available techniques of desegregation are adequate to cope with most school systems without even approaching the range of real unworkability. We have in this country available technology to integrate the schools. The concept of absolute unworkability refers only to extreme circumstances of geographical or demographic flukes—such as all-black towns far removed from whites—cases far beyond the range of concerns evidenced in the recent Fifth Circuit opinions leaving all-black schools." (pages 64-65 of Petitioners' brief).

The concept of constitutional responsibility embedded in these suggested "racial balancing" principles go

far beyond the mandates of the Constitution and of this Court in *Brown I, Brown II, Green* and other recent cases. Those cases dealt with State-compelled dual systems and under no stretch of the imagination can the Mobile County School System under the Court of Appeals order on review here in this Court be construed as a *dual* system. Nor can Petitioners' suggested principles be said to be limited to an attack on *dual* school systems, or for that matter, a desegregated non-racial school system. Their attack is on all systems not set up solely on the basis of race or color. Petitioners shift the emphasis from a consideration of the "system" to the individual black child in any given situation and quite frankly ignore any constitutional responsibility the State might have to the white children, they being pawns in this skillfully contrived scheme to insure that at no time will Negro children be without reach of a white skin, the idea being that, "black children will somehow gain from putting their black skins near to white skins."* [37]

This is perhaps the most demeaning suggestion ever cast upon the black people. Ironically, the very trait sought to be achieved by the most liberal among us—"color blindness"—has become the single distinction among all school children in the eyes of the Petitioners.

This concept subverts entirely the educational needs of the children of any given community or school district to the rigid, inflexible requirement of *racial balance* not only as to schools within the system, but each grade in each school within the system. The apparent intent is that the school be required to put its primary

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* [37] Royster, "The Immorality of Forced School Integration", National Observer, March 9, 1970.

responsibility of meeting the educational needs of the children aside in order that all children may hereafter be assigned to schools on the basis of the color of their skin. The Petitioners' proposed test of "absolute unworkability" for evaluating an alternative to racial balance is not in compliance with the Constitution. Such a test is no test at all. Sure, it would be more convenient for those far removed from the scene to determine whether or not the Mobile County School System has a racial balance in each school. It would be simply assignment by virtue of one's race. With modern technology and sufficient funding "absolute unworkability" of any balancing or mixing of the races in inconceivable, as pointed out by Petitioners in brief at page 64. However, we lose sight of the Constitutional prohibition with such undertaking.

On the practical side, perhaps the ultimate question is the financial ability of the school system to satisfy the Courts and the Petitioners short of bankruptcy. As all are well aware, the funds available for education in this southern system are far short of funds available in other states and well below the national average. Again, one must consider whether the people in this school system will support such educational system.

Next, the concepts of racial balances, quotas and percentages are alien to our basic idea of individual freedom and a free society. The most fundamental defect in Petitioners' concept is that behind each of the numbers that appear on zone charts and maps and ratios stands a child, not a chattel to be shifted about at the will of the Petitioner, the Federal Courts, or the State, *because of* that child's race or color. This concept is totally de-humanizing and totally impersonal

save for the color of one's skin. It is inconceivable that Petitioners are even seriously urging such a plan on this Court and frightening that this Court might give serious consideration to such Constitutionally prohibited schemes.

For the above reasons, among others, PTA respectfully urges this Court to pronounce the following legal principles to be followed by the lower courts in determining whether the desegregation plan in effect in Mobile County School System is in compliance with the equal protection clause of the Constitution: No child is to be effectively excluded from or assigned to any school within the system solely because of his race or color; that this Court insist upon compliance with its holding that no person is to be effectively excluded from any school because of race or color;* [38] that the equal protection clause of the Fourteenth Amendment requires that no child shall be excluded from or forced to attend any public school within the Mobile Public School System solely on the basis of race, color, religion, or national origin; that the Constitutional mandate prohibits assignment of any student to any public school solely on the basis of race or color; that racial balancing of teachers and students of any school solely on that basis is prohibited by the Constitution and has no place in a public school desegregation plan; that racial balancing be defined as any attempt by the State *to assign any child to any public school in the system by quota, ratio or* percentages solely on the basis of race or color; that the Constitution prohibits classification and assignment of students to public schools solely on the basis of race, color, religion or national

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* [38] *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969).

origin; that desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion or national origin, but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance; that race or color should have no significance in assigning students to schools within public school systems; that the Constitution does not authorize any State to assign children or any Court to issue any order seeking to achieve racial balance in any school and within such school by requiring the transportation of students from one school to another or one school district to another in order to achieve such racial balance; that racial balancing in a public school system is repugnant to the Constitutional mandate; that hereafter all children in the public school system shall be assigned to respective schools within the system without regard to race or color.

The legal principles requested here will no doubt be criticized by some as a retreat. Such is not the case nor the intent of this request for to adopt the principles suggested by PTA will do more to restore and retain individual dignity of all races than those color-criteria plans urged by the Petitioners. By announcing these legal principles, this Court will go far toward achieving permanent integration in this free society, rather than add to the turmoil, confusion and chaos that presently abounds in virtually every local school system and will avoid the inevitable oppression which will result from any consideration and acceptance of the concepts urged by Petitioners.

By adopting these above legal principles, men of good will may go about the task of learning to get along with one another in an atmosphere conducive to

education rather than turmoil and oppression. To announce these legal principles will be to ratify the guidelines that Congress laid down in the field of desegregation. True, the enunciations of Congress reflect a legislative compromise of conflicting ideas of men of good will, but the strength of our system is in the progress we have made through just such compromise. The legislative history of Title IV of the Civil Rights Act of 1964 reflects the problem that the Congress had with the issue of racial balance as an end in itself as opposed to desegregation:

> "The committee, therefore, authorized in Title IV the Commissioner of Education to extend technical assistance to school boards and school personnel where such assistance would aid in solving problems of desegregation. The committee failed to extend this assistance to problems frequently referred to as 'racial imbalance', as no adequate definition of this concept was put forward. The committee also felt this could lead to the forcible disruption of neighborhood patterns, might entail inordinate financial and human cost and create more friction than it could possibly resolve."* [39]

The Court must be responsive to the changing times, but it must also be responsive to the realities of day to day life:

> "We must leave to the legislature the task of reform in broad areas of the law and the writing of social legislation to meet the needs of a changing society."* [40]

This is but a plea of moderation, not a retreat from responsibilities and human dignity that each man owes

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* [39] 1964 U.S. Code Cong. and Adm. News., p. 2508.

* [40] M. Leigh Harrison, "The Law and the Changing Times", 16 Ala. L. Rev. 7.

to his brother regardless of race by commandments of the highest order. But then, is a plea of moderation one for which an apology must follow? Judge Learned Hand observed that "a society so riven that the spirit of moderation is gone, no court can save; a society where that spirit flourishes, no court need save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish."[41]

The District Courts afford the proper forum for determining whether a local public school plan accords to all children their Constitutional guarantees. New ways are being devised to assist District Courts in their consideration of the problems presented in desegregation cases. One such device is the appointment of a biracial committee that effectively brings to the attention of the local boards and the District Courts local opinions from both races. This device is in effect under the Fifth Circuit plan, which is now under review by this Court. It is respectfully submitted that this device is insurance against retreat for the races have the same number of representatives on the Committee.

The legal principles we here seek can be the foundation upon which a great society can be built for inherent in the requested principles is the very Constitutional concept that:

> "So long as he does not encroach upon others, no man shall be compelled to walk where he would not walk, live where he would not live, share what

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[41] L. Hand, "The Constitution of an Independent Judiciary to Civilization, In the Spirit of Liberty", 155, 164 (I. Dillard ed. 1960).

company he would shun, think what he would not think, believe what he believes not."* [42]

In *Brown I*, the facts and the issues were such that the decision was obvious to all save arch-segregationists. Here the Court is being asked to impose on the State, through local school boards, the affirmative duty to needlessly and at great expense transport children, often against their will, for considerable distances not for any educationally defensible reason, but solely to achieve racial balance. It should not be required.

CONCLUSION

WHEREFORE, it is respectfully submitted that this Court should declare:

1. That no child is to be effectively excluded from or assigned to any school within a school system solely because of his race or color;

2. That the equal protection clause of the Fourteenth Amendment requires that no child shall be excluded from or forced to attend any public school solely on the basis of race, color, religion or national origin;

3. That the assignment of any student to any public school solely on the basis of race is prohibited by the Constitution;

4. That racial balancing be defined as any attempt by the State to assign any child to any public school within the system by quota, ratio or percentages solely on the basis of race or color;

5. That desegregation means the assignment of students to public schools and within such schools

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* [42] Royster, "The Immorality of Forced School Integration", National Observer (March 9, 1970).

without regard to their race, color, religion, or national origin, but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance;

6. That the Constitution does not authorize any State to assign children or any Court to issue any order seeking to achieve racial balance in any school and within such school by requiring the transportation of students from one school to another or from one district to another in order to achieve racial balance; and

7. That the assignment of children to the public schools of a district and within a school shall be without regard to race or color.

Respectfully submitted,

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APPENDIX

STATISTICAL TABLE ON DESEGREGATION IN THE MOBILE COUNTY SCHOOL SYSTEM

	1962-63	1963-64	1964-65	1965-66	1966-67	1967-68	1968-69	1969-70	1970-71
Total number of schools	89	93	95	97	98	96	91	89	83
Total number of schools with a biracial student body	0	1	3	10	15	34	57	68	76
Total number of schools with a biracial faculty	0	0	0	0	0	10	89	88*1	82*1
Total number of students enrolled in the system	73949	76615	78652	77887	77101	76090	75464	73504	68623
Total number of students enrolled in biracial schools	0	3056	4004	10474	15636	28558	47560	55314	64306

*1 The one school without biracial faculty is Dauphin Island School, a one teacher school on an island in the Gulf of Mexico.

STATISTICAL TABLE COMPARING DESEGREGATION PROCESS IN THE MOBILE COUNTY SCHOOL SYSTEM TO THE ACHIEVEMENT OF FOURTH GRADE STUDENTS ON THE CALIFORNIA BATTERY ACHIEVEMENT TEST

	1965-66	1966-67	1967-68	1968-69	1969-70	1970-71
Total number of schools	97	98	96	91	89	
Total number of schools with a biracial student body	10	15	34	57	68	
Total number of schools with a biracial faculty	0	0	10	89	88	
Total number of students enrolled in biracial schools	10474	15636	28558	47560	55314	
Systemwide achievement level (4th grade students) California Battery Scores as compared to grade placement. (grade placement equals 100%).	104.4%	100%	99%	91.5%	89.7%	

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 436

BIRDIE MAE DAVIS, ET AL.,
Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS
OF MOBILE COUNTY, ET AL.,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

BRIEF FOR THE STATE OF ALABAMA AS AMICUS CURIAE

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BRIEF FOR THE STATE OF ALABAMA AS AMICUS CURIAE

THE INTEREST OF THE STATE OF ALABAMA

This brief, amicus curiae, is presented by the State of Alabama and is sponsored by the Attorney General of the State of Alabama, pursuant to Rule 42(4), Rules of the Supreme Court of the United States. School children throughout the State of Alabama are vitally affected by the issues before the Court in this case. The State of Alabama recognizes the mandate to establish nonracial and unitary school systems. In view of the position taken by the petitioners, it is of critical importance for this Court to again define the requirements of a unitary school system and to thereby allow school systems throughout this state and throughout the nation to proceed with their vital function of educating children, regardless of race, and in a nondiscriminatory manner.

The definition of the unitary system, as advanced by the petitioners, would require racial quotas and racial balancing in public education. The maintenance of such balances and racial ratios would of necessity forever require affirmative racial consciousness in public education. Attendance areas would have to be racially gerrymandered or noncontiguous zones shifted or children bused from different areas year after year, with no concern for the stability which is so important to the school world of a child. We do not here contest the affirmative duty of school boards to abolish dual school systems. We do, emphatically, urge that racial ratios and racial balances are not constitutionally required in the establishment or maintenance of the unitary system.

THE QUESTIONS BEFORE THE COURT

1. Must any particular racial balance be achieved in every school throughout a school system wherein no person is effectively excluded from any school because of race or color?

2. Must nondiscriminatory and fairly conceived geographic school attendance areas be altered to achieve any particular racial balance in every school throughout a system wherein no person is effectively excluded from any school because of race or color?

3. Must children be bused from one nondiscriminatory geographic attendance area to another for the sole purpose of achieving or maintaining any particular racial balance or racial ratio in every school throughout a system wherein no person is effectively excluded from any school because of race or color?

4. Is geographic districting based on place of residence an unreasonable classification so as to offend the equal protection clause?

5. Is the failure to bus children to and from school for the purpose of achieving a racial balance so unreasonable as to violate constitutional demands?

STATEMENT OF THE CASE

The Court of Appeals for the Fifth Circuit on June 8, 1970, upon obtaining supplemental findings of fact from the district court below, reviewed the constitutional effectiveness of proposed desegregation plans for the Mobile, Alabama school system.[1] In the June 8, 1970, order, as amended, the Court of Appeals held six elements to be essential in disestablishing a dual school system; i.e., composition of student bodies, faculty, staff, transportation, extracurricular activities and facilities. The court held the plan approved by the district court to be constitutionally defective in student assignment and also in faculty and staff assignments.

On the element of student assignment, which is the issue that petitioners have now brought before this Court, the Court of Appeals stated that it had studied several proposals for student assignment as submitted by the Justice Department, by the Department of

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1. On August 4, 1970, the Court of Appeals for the Fifth Circuit amended the June 8, 1970, order by approving certain nondiscriminatory attendance area changes which the district court provided upon remand, some of which actually increased the degree of desegregation.

The Court of Appeals for the Fifth Circuit on August 4, 1970, also approved the finalizing of zoning for the entire system which the district court provided upon remand.

Health, Education and Welfare, and by the school board.[2]

The Court of Appeals concluded that the Department of Justice plan, as modified by the court to increase desegregation, would disestablish the dual school system in the Mobile schools. The plan as approved is basically an attendance area plan which increases desegregation by the pairing of some schools which are in close proximity, and by the restructuring of grades in others. (The Court of Appeals requires complete desegregation of faculty and staff.) The approved plan maintains the neighborhood school concept while eliminating all but eight Negro facilities out of a total of 96 schools in the system. Under the approved plan, 25% of the Negro students (7,725 out of 30,884) will be assigned to the eight schools which would remain all or virtually all Negro schools.[3] The court found that these all Negro student bodies were the result of neighborhood patterns and ordered a majority to minority transfer provision with transportation in order to alleviate neighborhood entrapment.

Other plans before the court involved extensive transportation, contiguous and noncontiguous zoning, contiguous and noncontiguous pairing, and extensive cross busing. The only such plan before the court which eliminated every all, or virtually all, Negro school was designated as "HEW Plan B-1 Alternate." This alternate plan called for noncontiguous zoning

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2. The plans of the Justice Department and of the Department of Health, Education and Welfare are set forth in footnote 3 in the June 8, 1970, opinion of the Court of Appeals for the Fifth Circuit.

3. These eight schools are all at the elementary level.

and the noncontiguous pairing of every all Negro school in predominantly Eastern Mobile with a predominantly white school in Western or Southern Mobile (across the system) and for extensive cross transportation of both white and Negro children.

ARGUMENT

In this brief amicus, we shall not attempt to encompass the full range of detailed factual data argued by the parties to the case. Rather, we shall refer to the order and opinion of the Court of Appeals for the Fifth Circuit, and to the underlying legal significance to public education throughout the nation.

POSITION OF PETITIONERS

The petitioners ask this Court to immediately implement the plan designated as "HEW Plan B-1 Alternate." It is obvious that petitioners seek the altering of attendance zones, the busing of children, and the utilization of noncontiguous and "satellite zoning" for the purpose of achieving a racial balance or racial quota in every school throughout the system. The petitioners further seek to have this Court issue a directive to the effect that the neighborhood concept of student assignment can constitutionally be used only if racial balancing is achieved. (Page 31, Motion to Advance, and Petitioner for Writ of Certiorari.)

POSITION OF THE STATE OF ALABAMA

A UNITARY SCHOOL SYSTEM IS CONSTITUTIONALLY ACHIEVED BY THE USE OF NONDISCRIMINATORY ATTENDANCE AREAS WITHOUT COMPULSORY RACIAL BALANCING IN EACH SCHOOL THROUGHOUT THE SYSTEM.

The petitioners urge the immediate imposition in the Mobile County School System of a desegregation plan which would require the utilization of extensive cross-busing (white children bused across town to schools in predominantly black residential areas, and black children similarly bused into predominantly white residential areas); and which would require the noncontiguous pairing of each Negro school in Eastern Mobile with a predominantly white school in Western or Southern Mobile. Petitioners urge this plan over the one required by the Court of Appeals on the sole ground that under the plan suggested by petitioners, there would be no all black or virtually all black schools within the Mobile system. Under the plan approved by the Court of Appeals, as previously noted, only eight out of a total of 96 schools would remain Negro. The Court of Appeals in requiring the plan now before the Court and which the court found would disestablish the dual system, stated:

> "We have examined each of the plans presented to the district court in an effort to determine which would go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept of the school system."

It is apparent that the Court of Appeals was seeking the most effective and workable, nondiscriminatory student assignment plan. Clearly, contiguous zones and pairings where schools are in close proximity are more *workable* than noncontiguous zoning and pairing. It is obvious that cross town transportation would result in educational disruption and confusion and since such measures have as their avowed goal the maintenance of some racial balance in *all* schools throughout

the system, they are subject to constant and annual change as residents move from one area to another within the district, or when residents move out of the district entirely.

The opinion of the Court of Appeals evaluates the entire system to determine whether the dual system would be eliminated under the required plan. The court below specifically noted that every Negro child will attend school in a desegregated junior high and high school on a neighborhood basis. This approach is entirely consistent with the language of *Green*, which speaks in terms of the *whole* system.[4]

The Court of Appeals for the Fifth Circuit in a recent opinion by Chief Judge John Brown noted on May 5, 1970, that the entire system must be evaluated (See footnote 6, on Page 8 of Opinion), and further made the following critical analysis:

> "The deficiencies *do not lie in the simple existence of some schools that are all or virtually all Negro or white.* They lie instead in the fact that a substantial number of Negro students will receive their entire public education in a segregated school environment. . ." (Emphasis added) *Singleton v. Jackson Municipal Separate School District*, No. 29226, 5th Cir. May 5, 1970.

The court below reached a logical, reasonable and constitutional conclusion in selecting the most effective plan which maintained the basic concept of the neighborhood school.

Desegregation plans are properly weighed according to their effectiveness, within the boundaries of educational soundness and administrative feasibility. *Green*

4. *Green v. School Board of New Kent County*, 391 U. S. 430, 88 S. Ct. 1689, 20 L. Ed 2d 716.

v. School Board of New Kent County, 391 U. S. 430, 88 S. Ct. 1689, 20 L. Ed 716.

Courts throughout the country are commissioned by *Brown II* to give "weight to public and private considerations." 349 U. S. 294, at 300; *Green v. School Board of New Kent County*, supra, speaks in terms of plans that are "reasonably available" and "feasible", 391 U. S. 430 at 439 and 441; and Mr. Justice Harland in *Carter v. West Feliciana Parish School Board*, 396 U. S. 290, 90 S. Ct. 608, 24 L. Ed 2d 477, refers to the "workability" of approved desegregation plans. Such references are clear authority for the decision of the Court of Appeals for the Fifth Circuit in not requiring extensive cross town busing and noncontiguous satellite zoning for the purpose of achieving some racial balance when the plan as required was in fact found sufficient to eliminate the dual school system.

The basic question that ultimately emerges in this case is whether nondiscriminatory and fairly conceived attendance zones based on neighborhood and nearest school concepts must be abandoned in order to mechanically and arbitrarily integrate every school throughout a system. There is no constitutional justification or authorization for this. *Green*, supra, in fact suggests geographic zoning as one way of "realistically" converting to a unitary system. *Brown II* suggests that courts consider ". . . revision of school districts and attendance areas into *compact units* to achieve a system of determining admission to the public schools on a nonracial basis." (Emphasis added.) This Court in *Alexander v. Holmes*, 396 U. S. 19, 90 S. Ct. 29, 24 L. Ed 2d 19, quite clearly defined a unitary system as one wherein no person is to be effectively excluded from attendance in any school because of race or color.

Brown I, Green and *Alexander* all speak in terms of discriminatory state action in *excluding* children *because of race or color.*[5]

The decisions of this Court in prior school desegregation cases are not reasonably construed to contemplate or envision a requirement that school children, because of their race, be transported out of a residential area or that attendance areas be racially gerrymandered to achieve some racial balance in each school throughout a school system.[6]

In the often quoted social science report which was attached as an appendix to the first brief of appellants in *Brown v. Board of Education,* supra, the following statement is made:

"For purposes of the present statement, segregation refers to that restriction of opportunities for different types of associations between the members

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5. The case of *Cooper v. Aaron,* 358 U. S. 1, 78 S. Ct. 1401, 3 L. Ed 2d 5, reinforces *Brown* in holding that the Fourteenth Amendment *forbids states to use their governmental power* to bar children on racial grounds from attending school where there is a state participation through any arrangement, management, funds or property.

6. In *Bolling v. Sharpe,* 347 U. S. 497, 74 S. Ct. 693, 98 L. Ed 884, the court cautioned: "Classification based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." See also J. Kaplan, *Segregation Litigation and the Schools—Part II,* 58 Nw. U. L. Rev. 157, at 188, (1963): "Although today a court might rule that the state is required to consider race in a benign way, tomorrow this might well prove a precedent for a much less happy result. Moreover, even today it is not easy to decide whether a given racial classification is benign. . . . The very difficulty of making such determinations, especially in the context of litigations which may not even bring to bear our limited knowledge on the subject, would seem to militate strongly against any attempts by the courts to require states to consider race in a benign manner."

of one racial, religious, national or geographic origin, or linguistic group and those of other groups, which results from or is supported by the action of any official body or agency representing some branch of government. *We are not here concerned with such segregation as arises from the free movements of individuals which are neither enforced nor supported by official bodies.* (Emphasis added) . . "[7]

Counsel for the appellants in *Brown II* made the following statement on pages 10 and 11 of the Memorandum Brief which was filed in the Supreme Court of the United States during 1954 pursuant to the request of the court:

"The Negro children before the Court in these cases are entitled to public education on a non-segregated basis. The only way the relief can be meaningful to them is to abolish the policy of using race as a criterion for assignment of students. Thus, the only effective decree would be one which will enjoin the use of race in the assignment of any pupil in the school districts involved."

During the first oral argument before the Supreme Court in the *Brown* case, Mr. Justice Frankfurter asked Counsel for the appellants if every mother would, under the relief then requested, be entitled to have her child go to a nonsegregated school. When counsel answered "No, Sir", the Justice inquired as to what the relief would in fact accomplish. Counsel for the appellants replied "The school board, I assume, would find some other measure of distributing the children by

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7. *Effects of Segregation and the Consequences of Desegregation: A Social Science Statement,* 37 Minnesota Law Rev. 427 (1953).

drawing district lines," and that such lines should be drawn on a "natural basis."[8]

Nondiscriminatory, fairly conceived, and logically drawn geographic attendance zones, based on the location of residents, regardless of race, must in all logic and constitutional reason be held valid. The argument that nondiscriminatory district lines are legally deficient unless they result in racially balanced school attendance, simply does not pass constitutional muster.

It is only reasonable and logical that children attend the school nearest to their residence. The educational justifications for assignment to the nearest school are abundant and apparent, especially for younger and elementary age children.[9] The Court of Appeals below noted the obvious fact that small capacity elementary schools naturally draw students from a more limited

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8. 21 U. S. L. Week 3164 (December 16, 1952); Kaplan, *Segregation Litigation—Part II*, 58 Nw U. L. Rev. 157, at 178. The Law Week rendition, supra, reports that Mr. Justice Marshall who was then one of the counsel for the appellant stated in argument that district lines drawn on the basis of race or color would be a violation of the court decree and that the lines should be drawn *"on a natural basis."* (Emphasis added.)

9. Schools in proximity to the homes of students are of extreme importance from the aspect of traffic and pedestrian safety; in children being able to reasonably travel from their home to school, in children being able to reasonably use the school facilities after school hours; the nearest school concept eliminates the severe problem of a school board seeking to determine which children to bus away from their nearest school; the nearest school concept eliminates the difficulty of parent contact with a distant receiving school, (often times it is necessary for parents to afford medical attention and innumerable other special and specific consideration to school age children); the nearest school concept alleviates the problem of tardiness or absence due to length of travel or missing bus schedules.

area whereas high schools with larger capacities will have larger attendance areas. The racial composition of the persons living in close proximity to an elementary school is naturally reflected in that school's attendance to a greater degree than in a larger high school or junior high school.

Negro and white children who are in the same grade and who live in the same geographic area are assigned to the same school under the plan ordered by the court below. Pursuant to the prior orders of this Court, and to the instant order of the Court of Appeals, the faculty in the schools to which such assignments are made will be completely desegregated and not racially identifiable.

This method of student assignment, based on place of residence, and in the absence of any improper motivation, cannot possibly be judicially held to be such an unreasonable classification as to offend the equal protection clause.[10]

If the area into which a family moves, or in which the family continues to live, is occupied by a predominance of black or white residents, the school nearest to such an area will naturally and inevitably reflect this

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10. Schools throughout a system will of course vary in quality of teachers, physical facilities, etc. If the teachers are assigned without regard to race so that the school cannot be identified as being intended for either black or white children, and if physical facilities are provided on the same nondiscriminatory basis, there is no racial discrimination. "The Supreme Court has never held that in the absence of some racial classification the mere inequality of one school compared with another involves a constitutional violation. In many communities one school is clearly better in terms of faculty, student body, physical facilities, and prestige, than others, yet no one has suggested that this inequality raises a federal constitutional question." Kaplan, *Segregation Litigation—Part II*, 58 Nw. U. L. Rev. 157, at 172 (1963).

racial composition. This is not a violation of the Fourteenth Amendment. If the student bodies of some schools remain all Negro due solely to residential patterns, there is simply no constitutional wrong to be remedied.[11]

Brown I, supra, *Green*, supra, *Alexander*, supra, and *Northcross*,[12] and all intervening decisions hold state imposed dual systems unconstitutional and basically wrong. *Brown I* holds that from this wrong, injury and invidiously imposed inequality is inevitable. Therefore, in *Brown I*, there was found to be a constitutional wrong and an injury therefrom to be remedied. However, when nondiscriminatory and fairly conceived geographic attendance zones are drawn and children are assigned in accordance therewith without regard to race or color, there is a complete absence of invidious state action. Remedial measures, such as racial balancing through busing, noncontiguous zones and non-

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11. As to the possibility of noninvidious injury from imbalance in a unitary system, recent educational surveys show that family background, social and economic status and community characteristics are the real controlling elements of school achievement rather than the racial composition of a school. U. S. Department of Health, Education and Welfare—Equality of Educational Opportunity, § 3.2, 966, as quoted in D. Cohen, *Racial Equality in Education, Part I*, 16 UCLA Law Rev. 255 (1969). These observations become especially meaningful when completely desegregated faculties are provided and when state imposed segregated assignment is eliminated. As to the educational harm caused to both Negro and white children by busing to secure integration, see Kaplan, *Equality in an Unequal World*, 61 Nw U. L. Rev. 363, at 401-402 (1966).

12. *Northcross v. Board of Education*, 397 U. S. 232, 90 S. Ct. 891, 25 L. Ed 2d 246 (1970).

contiguous pairings are entirely without constitutional justification.[13]

President Richard M. Nixon, in a statement, *Explaining His Policy on School Desegregation*, N. Y. Times, March 25, 1970, p. 26, stated:

> "There is a constitutional mandate that dual school systems and other forms of de jure segregation be eliminated totally. But within the framework of that requirement, an area of flexibility—a 'rule of reason'—exists, in which school boards, acting in good faith, can formulate plans of desegregation which best suit the needs of their own localities. . . .
>
> *When there is a racial separation in housing, the constitutional requirement has been held satisfied even though some schools remained all-black.*" (Emphasis added.)

The United States Congress has legislatively spoken on several occasions against the busing of students for the purpose of achieving a racial balance. Tit. 42 U. S. C. 2000(c), and 6(a) (2) § 401 (b) and 407 (a) (2) of the Civil Rights Act of 1964; Department of Labor and Health, Education and Welfare Appropriations Act, 1969, Pub L. No. 90-557, § 410, 82 Stat. 969; Model Cities Act of 1966, 42 U. S. C. § 3303(d); Elementary and Secondary Education Act of 1965, 20 U. S. C. § 884 (Supp. 111, 1965-67).

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13. See Kaplan, *Segregation Litigation—Part II*, 58 Nw U. L. Rev. 157, at 176 (1963): "Merely because racial classification without harm is unconstitutional does not mean that harm without racial classification is equally impermissible. Law provides us with many examples where a party may suffer identical harm under two different circumstances and have a legal right to redress under one and not the other. . . . This principle applies equally to racial problems. . . ."

U. S. District Judge Frank M. Johnson, Jr., of the Middle District of Alabama, during February of 1970, in reviewing desegregation plans for the Montgomery, Alabama school system concisely set forth the law as to the issue of remedial measures necessary to eliminate a dual school system:

"Plaintiffs' objections and the few proposals made by the Office of Education, Department of Health, Education and Welfare, that differ from the plan as proposed by the Montgomery County Board of Education, appeared to be based on a theory that racial balance and/or student ratios as opposed to the complete disestablishment of a dual school system is required by the law. Such is not this court's concept of what the law requires. *Complete disestablishment of the dual system to the extent that it is based upon race is required. While pairing of schools may sometimes be required to disestablish a dual school system, the pairing of schools or the busing of students to achieve a racial balance, or to achieve a certain ratio of black and white students in a school is not required by the law.*" (Emphasis added). *Carr v. Montgomery County Board of Education,* .....F. Supp. ....., Civil Action No. 2072, M. D. Ala., February 24, 1970. (Affirmed by the Fifth Circuit Court of Appeals in an opinion by Judge Goldberg (5th Cir. No. 29521, June 29, 1970).[14]

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14. The Supreme Court of the United States has specifically recognized Judge Johnson's thorough understanding of the constitutional principles and requirements in school desegregation. *U. S. v. Montgomery County Board of Education,* 395 United States 225 (1969).

It is extremely significant here that in *United States v. Montgomery County Board of Education*, 395 U. S. 225, (1969), which dealt with faculty desegregation, the Supreme Court noted:

> "As the United States, petitioner in No. 798 recognizes in its brief, the District Court's order [requiring remedial faculty ratios] 'is designed as a *remedy* for past racial assignment. . . . *We do not, in other words, argue here that racially balanced faculties are constitutionally or legally required*'. Brief for the United States at 13." (Emphasis added.)

We understand the law, as set forth in the many cases from *Brown* through *Green* and *Alexander* to *Northcross*, to be that school districts have an affirmative duty to completely eliminate dual school systems based upon race, and to provide unitary systems. It may be in some cases that dual systems based on race have resulted in two schools with the same grades in close proximity to each other, or in overlapping or otherwise discriminatory bus routes. To *eliminate the dual system*, the restructuring of schools in close proximity or remedial bus route changes may logically be required. *The constitutional purpose of such remedial measures is not racial balance but rather the achievement of a nondiscriminatory, unitary school system.*

For this Court to order racial balance in schools throughout systems over the country would keep American public education in perpetual turmoil. In many areas public education could not survive. No court or governmental agency in our democratic society can tell a family where to live or where to move. An acceptably balanced school this year may be totally unbalanced two years from now, or even next year.

Why do people live in one neighborhood rather than another? It is indeed an oversimplified and overstrained answer to attribute racial or nonracial neighborhood patterns to state or governmental action. There is no creditable evidence before this Court that Negroes in Mobile, Alabama, and throughout the nation, who continue to live in neighborhoods with a preponderance of their race do so because prior to 1948 racial restrictions in deeds were judicially enforced[15] or because theaters and places of public amusement throughout the country have been racially segregated in the past.[16] When this question is put in proper perspective, it must in all reason be conceded that personal preference and economic reality constitute the real controlling factors in the selection of a neighborhood in which a person decides to remain or in which to buy or rent a home.[17]

The petitioners in brief ask this Court to require far more than the unitary school system envisioned in *Brown*, and clarified in *Green* and *Alexander*. Petitioners seek in addition to unitary systems, for all schools throughout all systems to be racially balanced. Petitioners do not stop with this, but they even suggest that

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15. Prior to this Court's decision in *Shelley v. Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed 2d 1161.

16. Kaplan, *School Segregation Litigation—Part II*, 58 Nw U. L. Rev. 157, at 186 (1963).

17. The dubious labels of de facto and de jure segregation are further obscured and completely desectionalized when such elements as pre 1948 racial restrictions in deeds, public accommodation laws and housing ordinance are injected. These elements in varying degrees certainly and without question were present throughout the entire nation prior to *Shelley v. Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed 2d 1161, and prior to the public accommodation laws, open housing provisions and other antidiscrimination measures of national scope which have become law over the last quarter century.

racially balanced neighborhoods be achieved through the compulsion of a school desegregation case involving the school children of this nation. (See p. 28 of Motion to Advance and Petition for a Writ of Certiorari filed herein). *Brown I, Brown II,* and *Green* certainly cannot be reasonably interpreted to require or to even authorize such a far-reaching proposal.[18]

The following candid and relevant statement was recently made by Robert L. Carter, who was one of the original attorneys for the plaintiff in the *Brown* cases:

> "For, whatever the Court does, our society is composed of a series of insulated institutions and interests antithetical to the Negro's best interest. Effective regulation and control of these institutions and interests must come not from the Supreme Court but from the bodies politic."[19]

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18. Open Housing, Title VIII, Civil Rights Act of 1968, 42 U. S. C. A. 3601, et seq.; *Jones v. Mayer,* 392 U. S. 409, 88 S. Ct. 2186, 20 L. Ed 2d 1189, afforded judicial and congressional protection from housing discrimination. There can be no constitutional justification for imposing this burden on already overburdened school systems.

19. R. Carter, *The Warren Court and Desegregaton,* 67 Mich. L. Rev. 237, at 248 (1968).

CONCLUSION

The Court of Appeals for the Fifth Circuit has had extensive experience with the constitutionality and workability of school desegregation plans. The opinion below from that court holds that a unitary system is constitutionally achieved without the drastic system-wide balancing measures insisted upon by the petitioners. The Court of Appeals evaluated the entire system in requiring the plan which forms the basis of this appeal.

The basic issue is just how far American public education must go in order to achieve a racially non-discriminatory and unitary school system. If some balance in every school is to be compelled, affirmative racial consciousness will be present from year to year in public education. Instead of educating just children, regardless of race, educators throughout this country would be constantly forced to regard race and children would of necessity be classified, assigned, and accounted for on the basis of race or color. These requirements and their result cannot be in the best interest of public education.

It is time that we put school desegregation in its proper perspective.

The *education of children*, as stated in *Brown I*, is indeed perhaps the most important function of state and local government. When racial discrimination is eliminated, when racially nonidentifiable faculities are provided, when no person is effectively excluded from any school because of race, it is time to send educators back to the classroom to carry on with the basic functions of teaching children and of providing quality

education and sound guidance without regard to race or color.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 436

BIRDIE MAE DAVIS, ET AL.,
Petitioners,

vs.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.

WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF STATE OF MISSISSIPPI, AMICUS CURIAE

This brief of the State of Mississippi, amicus curiae, is presented for the State of Mississippi sponsored by its attorney general, the authorized law officer thereof.

THE INTEREST OF THE STATE OF MISSISSIPPI, AMICUS CURIAE

The State of Mississippi has a vital interest in the resolution of the questions presented herein. The welfare of its 149 public school districts—perhaps the survival of public school education in the State—depends on the answers which this Court gives to those questions. It is hardly conceivable that the outcome of any other case could have as much significance to the State of Mississippi and its citizens as the outcome of this case.

Illustrative of the importance of this case to the public school districts of Mississippi is its bearing on the ultimate outcome of the case involving the Clarksdale Municipal Separate School District, now before the Court of Appeals for the Fifth Circuit on Motion for Rehearing In Banc. Because the developments in that case are a fair example of developments in numerous other Mississippi school districts, and because they illuminate the problems dealt with herein, a brief resumé of them will be given.

Clarksdale is a town of approximately 22,000 inhabitants. It is bisected by the railroad tracks of the Illinois Central Railroad Company which run in an easterly and westerly direction from the northeastern to the southwestern corner of the town, dividing it into approximately equal northerly and southerly halves. Accentuating the division of the residential areas of the town made by those railroad tracks is the fact that throughout a good portion of the town the lands adjacent to both the northerly and southerly side of those railroad tracks are occupied by commercial and industrial establishments. Also adding to such division is the fact that those railroad tracks, located as they are in a town situated in the flat lands of the Yazoo-Mississippi Delta, are on an embankment. With

but the exception of where one street crosses over the tracks, one cannot cross those railroad tracks from one residential area to another except through an underpass. And throughout the length of those railroad tracks as they pass through Clarksdale—some three and a half miles—there are but four underpasses, with but one west of the Sunflower River and that one right next to the river.

The southerly half of the town is bisected almost equally by the railroad tracks of the Illinois Central Railroad Company which run in a southerly direction from Clarksdale to Jackson. Those tracks, which create a southwest quadrant and a southeast quadrant, are not elevated and one can cross over at grade level at almost every intersection.

The northerly half of the town is bisected by the Sunflower River, which creates a northwest quadrant and a northeast quadrant. The central business district of the town is in the northeast quadrant of the town. There are two bridges over the river in the northerly section of the town (just as there are two bridges over the river in the southerly half of the town) which enable those few elementary school pupils who live in the northeast quadrant of the town to pass over into the northwest quadrant of the town (which is entirely residential) without passing through the central business district.

The school district's facilities include:

1) Two senior high schools; one in the northwest quadrant of the town and the other in the southeast quadrant of the town. The one in the northwest quadrant of the town is located so as to conveniently serve those high school pupils who live north of the east-west railroad tracks. The one in the southeast quadrant is located so

as to conveniently serve those high school pupils who live south of the east-west railroad tracks.

2) Three junior high schools; one in each of the northwest, southwest and southeast quadrants of the town. Each is located so as to conveniently serve those junior high pupils who live in the quadrant in which it is located. The one in the northwest quadrant is most conveniently located for those few junior high pupils who live in the northeast quadrant of the town.

3) Seven elementary schools; three in the northwest quadrant of the town, and two in each of the southwest and southeast quadrant of the town. Each is located so as to conveniently serve those elementary pupils who live in the neighborhood wherein it is located. Few, if any, elementary pupils live more than half a mile from the elementary school in his neighborhood.

The school district does not provide transportation for its pupils. The laws of Mississippi provide no authority for it to do so.

Racially, Clarksdale is almost evenly divided between Negroes and whites, and, of course, as in all other towns and cities where there is a bi-racial population there is an uneven distribution of the races throughout the community. A majority of its whites live north of the east-west railroad tracks. Practically all of its Negroes live south of those tracks. But there are sizable areas where the races are mixed. The area served by the high school in the southeast quadrant of the town, and the areas served by the junior high schools in the southwest and southeast quadrants of the town, have a substantial amount of racial mixture in their population. In the neighborhood served by one of the elementary schools in the southwest quadrant of the town, about half of the area is composed of whites.

The neighborhood served by the other elementary school in the southeast quadrant of the town has a considerable number of whites among its predominantly Negro population.

When the school district was called upon to submit a desegregation plan (it was the first in the Northern District of Mississippi to be so called upon), it proceeded to do that which it understood *Brown* required it to do, i.e., to abolish its dual zone lines, and then to adopt a desegregation plan which calls for compact attendance areas or zones, with reasonable, rational and natural boundaries, and which includes the requirement that all pupils, without exception, attend the school in the zone wherein he or she lives, thereby basing its admission policy on residence and not on race.

The school district's desegregation was approved by order of the district court dated December 13, 1965.

An appeal was taken to the Court of Appeals for the Fifth Circuit. Hearing of the appeal was expedited so that it would be, and was, argued along with the *Jefferson* cases, in April of 1966. However, it was not decided along with the *Jefferson* cases; probably because they were "freedom-of-choice" cases.

No action was taken on the appeal for almost three years. It was not until March 6, 1969, that the court handed down its opinion wherein it remanded the case for a hearing to determine the effectiveness of the plan in today's factual setting.

When the case came on for rehearing before the district court, the court had before it the district's desegregation plan and a plan developed by the United States Office of Education, Department of Health, Education and Welfare, which the court had had prepared. After hearing the evidence with respect to them, the district court found the

HEW plan to "border almost on the indefensible" and "beyond the rule of reason." As to the district's plan, the court found it to be fundamentally sound, and could fault it for only one thing: It had not produced racially balanced schools.

> "The one defect . . . is that it hasn't produced an acceptable degree of integration. If it had, why, that would be an ideal plan."

In order to bring about the racial balance which it apparently felt it had to achieve, the district court, by its order of January 10, 1970, directed the consolidation of the district's two high schools into one high school and the consolidation of the district's three junior high schools (with the exception of one grade in one of them, which couldn't be accommodated on account of space) into one junior high school. However, because it could find no way to restructure the district's elementary schools without doing violence to recognized educational considerations and elementary common sense, it left the district's elementary schools as they were until it could have a report from a Special Master, which it then appointed to make a study and formulate recommendations for the operation of the district's elementary schools.

After the Special Master's report was in, another hearing was had. It resulted in the court's order of May 8, 1970, which adopted the Special Master's recommendation that no change be made in the operation of the district's elementary schools ("all students enrolled in grades 1-6 shall be assigned to elementary schools . . . nearest each student's residence, regardless of zone, present or previous racial enrollment of the school") but with an absolute right of majority to minority transfer.

Appeals were taken by both sides from the orders of January 10, 1970, and May 8, 1970, and were decided by the Court of Appeals for the Fifth Circuit on August 12, 1970 (Rebecca E. Henry, et al. v. The Clarksdale Municipal Separate School District, et al.), with one of the three judges dissenting. The district court's consolidation of the district's senior and junior high schools was confirmed, and the HEW plan was ordered into effect.

As a result of the Circuit Court's action, the district's schools which were built to serve the pupils in the neighborhoods in which they were located, have been completely restructured. Now all high school pupils south of the east-west tracks have to attend the high school north of those tracks. All junior high school pupils north of the east-west tracks have to attend a junior high school south of those tracks. All first and second grade pupils north of the east-west tracks, and some third grade students north of those tracks, have to attend an elementary school south of those tracks. Some third, fourth, fifth and sixth grade students south of the east-west tracks have to attend elementary schools north of those tracks.

All of the foregoing was required for one purpose: to bring about racial balance in schools which would otherwise remain racially unbalanced because of residential patterns in the neighborhoods wherein they were located.

The developments in the Clarksdale Municipal Separate School District are typical of developments in the other school districts of Mississippi. Hence the interest of the State of Mississippi in the outcome of this case.

ARGUMENT

In *Brown I* and *Brown II* (347 U.S. 483, 98 L. Ed. 873; 349 U.S. 294, 99 L. Ed. 1083), this Court called for the cessation of the practice of segregating children solely on the

basis of their race, and the establishment of systems whereby the admissions of children to public schools would be determined on a nonracial basis. In spelling out how those objectives should be accomplished, it authorized *the revision of school districts and attendance areas, within the limits set by normal geographic school districting, into compact units, to bring about a system not based on color distinctions.* In addition, the Congress and the President of the United States, through the enactment of the *Civil Rights Act of 1964*, placed their approval on the holding of the Court of Appeals for the Seventh Circuit in *Bell* v. *School City of Gary, Ind.*, 324 F. 2d 209 (certiorari denied 377 U.S. 924, 12 L. Ed. 2d 216), wherein the fact of de facto segregation which fortuitously resulted from housing patterns was held not to invalidate a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention or purpose to segregate the races. Consequently, a desegregation plan which provides for the creation of attendance areas or zones fairly arrived at, bounded by natural, nonracial monuments which define, in truth and in fact, true neighborhoods, and directs that all children living in such an attendance area or zone, without exception, should attend the appropriate school in his or her attendance area or zone, is in accord with both *Brown* and the *Civil Rights Act of 1964*, even though some of the attendance areas or zones are populated, as a result of housing patterns in the community, with people of one race.

Yet despite the fact that when this Court spoke in *Brown* of attendance areas, it said that such areas should be "*compact units*" constructed "*within the limits set by normal geographic school districting,*" and when it spoke in *Brown* of the type of school system which should be created, it said that such system should be "*a system not*

based on color distinctions," and when it spoke in *Brown* of admission policies which should be achieved, it said that admissions of children to public schools should be on "*a non-racial basis,*" and despite the fact that the thrust of *Bell*—"which was that if school districts were drawn *without regard to race*, . . . those districts are valid *even if there is racial imbalance* caused by discriminatory practices in housing"—was written into the *Civil Rights Act of 1964*, and despite the provisions of *Sections 401, 407* and *410* of the *Civil Rights Act of 1964*, wherein school districts were authorized to assign students according to their residences and courts were prohibited from shifting students in order to achieve racial balance, petitioners contend (and some courts, such as the Court of Appeals for the Fifth Circuit, agree with them) that a desegregation plan such as has been described in the preceding paragraph is constitutionally defective and must be rejected for no other reason than to create a "racial balance" in schools and that zone lines, to be valid, have to be gerrymandered in order to alleviate racial imbalance resulting from housing patterns.

We submit:

1. That de facto segregation which occurs fortuitously because of housing patterns does not render an otherwise acceptable desegregation plan unconstitutional:

2. That the courts, in view of the provisions of the *Civil Rights Act of 1964*, do not have authority to issue orders seeking to achieve a racial balance in neighborhood schools;

3. That the Fourteenth Amendment to the Constitution of the United States does not require a school district to gerrymander its attendance area or zone lines so as to include pupils of a certain race within an attendance area or zone, who would not be included therein if its attend-

ance area or zone lines were drawn in a reasonable, rational and nonracial fashion; and

4. That the courts do not have the authority to require the employment of school personnel on a racial basis.

Brown (A) Requires the Cessation of Segregating Children in Public Schools Solely on the Basis of Race; (B) Directs, As the Means of Achieving the Desegregation of the Schools of a District, the Creation of Compact Attendance Areas; (C) Orders the Achievement of a System of Determining Admissions to the Public Schools on a Nonracial Basis; and (D) Commands the Creation of a System Not Based on Color Distinctions.

The four cases which are grouped under the name of *Brown* v. *Board of Education*, 347 U.S. 483, 98 L. Ed. 873, all presented challenges to legally imposed systems of segregation which either permitted or required separate schools for Negro and white children. The question posed by them, according to the court, was,

> "Does segregation of children in public schools *solely on the basis of race*, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?" (Emphasis added.)

To its own question, the court gave this succinct answer:

> "We believe that it does."

The Court then went on to say:

> "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, *by reason of the segregation complained of*, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." (Emphasis added.)

The paragraph quoted does contain the sentence: "Separate educational facilities are inherently unequal." But surely that sentence must be read in the context of what had theretofore been said in the opinion, as well as that which was thereafter said therein, and particularly in the light of the legal question before the court. If so read, any fair minded person would have to conclude that the separate educational facilities referred to were those to which the students are assigned *solely on the basis of their race.*

A fair reading of *Brown* will show that it held simply that:

> " 'To separate (Negro children) from others of similar age and qualifications *solely because of their race* generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.' " (Emphasis added.)

Thereafter, in spelling out the manner in which its original decision had to be implemented (349 U.S. 294, 99 L. Ed. 1083) the court authorized to lower federal courts to consider—

> ". . . problems related to administration, arising from the physical condition of the school plant, the school transportation system, *revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis.*" (Emphasis added.)

The sort of attendance areas which this court had in mind was indicated in one of the questions propounded for reargument, as attendance areas resulting from

> "normal geographic school districting."

And those words have been almost unanimously construed by the courts as authorization for attendance areas

or zones honestly and conscientiously constructed without regard for race, and as requiring the disapproval of attendance areas gerrymandered for racial purposes.

Petitioners should have no quarrel with the holdings of those cases. For in the brief filed by the NAACP in *Brown II*, it was stated on page 12:

> "The extent of the boundary alterations required, in the reformulation of school attendance areas on a nonracial basis, will vary. This is illustrated by the recent experience in the District of Columbia in recasting attendance boundaries on a wholly geographical basis. *In the neighborhoods where there is little or no mixture of the races, and where school facilities have been fully utilized,* it was found that the *elimination of the racial factor did not work any material change in the territory served by each school.*" (Emphasis supplied.)

In *Brown II*, this Court directed school boards "to achieve a system of determining admission to the public schools on a nonracial basis."

That the systems to be created pursuant to its directions should be free of racial considerations was made clear by this Court in one of the questions propounded for reargument when it described the sort of system it desired as—

> "a system not based on color distinctions."

Thus the mandate of *Brown* clearly is—

a) To cease the practice of segregating children solely *on the basis of race*;

b) To revise school districts and attendance areas "into *compact units*";

c) "To achieve a system of determining admissions to the public schools *on a nonracial basis*"; and

d) To create *"a system not based on color distinctions."*

The Subsequent Decisions of This Court, Rightly Interpreted, Are Not Contrary to What Was Said in Brown.

Since *Brown*, this court has handed down several decisions which are sometimes said to contradict what was clearly set forth in *Brown*. But we submit that those decisions, rightly interpreted, in no way militate against what was said in *Brown*.

For instance, in deciding *Alexander* v. *Holmes County Board of Education*, ... U.S. ....., 24 L. Ed. 2d 19, this Court said, in the first paragraph of its order:

> "The Court of Appeals' order of August 28, 1969, is vacated, and the cases are remanded to that court to issue its decree and order, effective immediately, declaring that each of the school districts here involved may no longer operate a dual school system *based on race or color*, and directing that they begin immediately to operate as unitary school systems within which *no person is to be effectively excluded from any school because of race or color*." (Emphasis added.)

The statements in the order that school districts may no longer operate a dual system *based on race or color*, and that *no person is to be effectively excluded from any school because of race or color*, are essentially the same as the *Brown* directives "to achieve a system of determining admissions to the public schools *on a nonracial basis*" and to create "*a system not based on color distinctions.*"

Cases such as *Green* v. *County School Board of New Kent County, Va.*, 391 U.S. 430, 20 L. Ed. 2d 716; *Raney* v. *Board of Education*, 391 U.S. 443, 20 L. Ed. 2d 727; and *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 20 L. Ed. 2d 733, did not deal with factual situations such as were before the court in *Brown*, nor with the validity of desegregation plans formulated pursuant to the directives of

Brown. They were "freedom-of-choice" cases wherein the question presented was whether, and on what conditions, a defendant district would be permitted to operate its schools by a method designed to avoid the zoning requirements of *Brown*. Such question is, of course, vastly different from the question of whether a district organized and operating under an attendance area plan in accordance with the requirements of *Brown* can ignore the race of its pupils in creating its attendance areas or zones, or has to take the race of its pupils into account when creating its attendance areas or zones.

In *Green*, according to this court—

> "The question for decision (was) whether, under all the circumstances here, respondent School Board's adoption of a 'freedom-of-choice' plan which allows a pupil to choose his own public school constitutes adequate compliance with the Board's responsibility 'to achieve a system of determining admissions to the public schools on a nonracial basis. . . .'"

That the answer to that question has no application to cases involving the effect of de facto segregation which occurs fortuitously because of housing patterns on an otherwise acceptable desegregation plan, is amply shown by this paragraph from the court's opinion:

> "There is no residential segregation in the county; persons of both races reside throughout. The school system has only two schools, the New Kent school on the east side of the county and the George W. Watkins school on the west side. . . . The School Board operates one white combined elementary and high school (New Kent) and one Negro combined elementary and high school (George W. Watkins). There are no attendance zones. Each school serves the entire county."

The first paragraph in *Raney* v. *Board of Education*, 391 U.S. 443, 20 L. Ed. 2d 727, shows that it is subject to the same comments as were applied to *Green*:

> "This case presents the question of the adequacy of a 'freedom-of-choice' plan as compliance with Brown v. Board of Education, 349 U.S. 294, 99 L. Ed. 1083, 75 S. Ct. 753 (Brown II), a question also considered today in Green v. County School Board of New Kent County, 391 U.S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689. *The factual setting is very similar to that in Green.*" (Emphasis added.)

In *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 20 L. Ed. 2d 733, the question, according to the court, was similar to the question decided in *Green* and *Raney* in that the "free transfer" provision in the plan then before the court, which operated as a device to allow resegregation of the races to the extent desegregation would be achieved by geographically drawn zones, converted the plan into what was essentially a "freedom-of-choice" plan, subject to the same tests as were applied in *Green* and *Raney*.

In addition to the fact that *Green* dealt with a factual situation entirely dissimilar to those under consideration in *Brown*, it can be pointed out that it did not call for integration as such; with painstaking care, its aim was repeatedly stated in terms of "desegregation." The opinion could not have been more clear. The obligation on school boards, it said, is to produce effective plans "achieving desegregation." They must make progress "toward disestablishing state-imposed segregation." They must "dismantle the state-imposed dual system." Lower courts should make certain that "state-imposed segregation has been completely removed."

In brief, according to *Green*, the responsibility of school boards is "to effectuate conversion of a state-im-

posed dual system to a unitary, nonracial system." And this conversion means "a system without a 'white' school and a 'Negro' school, but just schools."

Yet *Green* is being misused by some courts as the basis for orders striking down legitimate desegregation plans, based on residential zoning, on the ground that it (*Green*) proscribes neighborhood schools that do not result in racially balanced student bodies. *Green* was so misused in the rejection of the Clarksdale plan.

De Facto Segregation—Which Occurs Fortuitously Because of Housing Patterns— Does Not Make an Otherwise Acceptable Desegregation Plan Unconstitutional.

The paramount question before the court is whether a desegregation plan constructed on a nonracial basis is constitutional, regardless of the fact that all-black and all-white schools result therefrom because of the residential patterns in the community, or whether a desegregation plan must result in racially balanced schools, even though to achieve that result wholesale assignments by race must be made, is essentially the same as the question of whether de facto segregation—which occurs fortuitously because of housing patterns—makes an otherwise acceptable desegregation plan unconstitutional.

As we have pointed out, the directives for the construction of attendance areas or zones, as set forth in *Brown*, are—

> First, the attendance areas or zones must be "compact units," and
>
> Second, the system thus created must be "a system not based on color distinctions."

Brown necessarily was to the effect that de facto segregation—that which occurs fortuitously because of housing

patterns—does not make an otherwise acceptable desegregation plan unconstitutional. For if an area around a school is inhabited solely by whites or blacks, the creation of the "compact units" required by *Brown* will necessarily result in racially imbalanced attendance areas or zones. Only by the drawing of zone lines without regard to color can "a system not based on color considerations" be devised. For only if attendance areas or zones are set up as they should be: through the drawing of reasonable, rational and nonracial lines, without regard to the race of the pupils enclosed thereby, will admissions to the school of that zone be determined on a nonracial basis, i.e., the residence of the pupils. But if the boundaries of the attendance areas or zones must be gerrymandered so as to include certain pupils within the zone who would not be included therein if those boundary lines were drawn in a reasonable, rational and nonracial fashion, then the admission into the school of the zone of those pupils artificially brought into the zone will be based on racial considerations, in defiance of the command of *Brown*.

From the very beginning—in fact, in *Brown* after remand to the trial court—it has been held that if attendance areas or zones are fairly arrived at, and all children living in each attendance area or zone are required to attend the school in that area or zone, no violation of the Fourteenth Amendment results even though the concentration of children of one race in particular areas or zones results in racial imbalance in the schools. *Brown* v. *Board of Education of Topeka*, 139 F. Supp. 468. To quote from the trial court's opinion:

> "If it is a fact, as we understand it is, with respect to Buchanan School that the district is inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live."

At least four Courts of Appeals have reached the same conclusion. The Seventh, in *Bell* v. *School City of Gary, Ind.*, 324 F. 2d 209 (certiorari denied 377 U.S. 924, 12 L. Ed. 2d 216), which first appeared in 213 F. Supp., at page 819, was presented the question whether the schools of Gary, with some having all-white and some all-colored student bodies, met the requirements of *Brown*. After pointing out that the composition of those student bodies was the result of the concentration of the city's Negroes in certain sections, the court added:

> "We approve . . . the statement in the District Court's opinion, 'Nevertheless, I have seen nothing in the many cases dealing with the segregation problem which leads me to believe that the law requires that a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention or purpose to segregate the races, must be destroyed or abandoned because the resulting effect is to have a racial imbalance in certain schools where the district is populated almost entirely by Negroes or whites. . . .'"

The Tenth Circuit Court of Appeals reached the same conclusion in *Downs* v. *Board of Education of Kansas City*, 336 F. 2d 988 (certiorari denied 380 U.S. 914, 13 L. Ed. 2d 800), which involved a broad attack on the administration of the Kansas City, Kansas, school system, and particularly on the action of the school board in defining school boundary lines and requiring students to attend the school in the district in which they lived, with the result that some of the schools were all-white and some all-Negro. But, said the court:

> "The neighborhood school system and other school systems, by which admission to the school is determined upon the basis of similar criteria such as residence and aptitude, are in use in many parts of the country. . . . In the second Brown case, supra,

the Supreme Court appears to have recognized that school admissions may be based upon such factors as residence. It said that in determining 'good faith compliance at the earliest practicable date,' the lower courts might take into account problems arising from the '* * * revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis * * *'.

. . .

"We conclude that the decisions in Brown and the many cases following it do not require a school board to destroy or abandon a school system developed on the neighborhood school plan, even though it results in a racial imbalance in the schools, where, as here, that school system has been honestly and conscientiously constructed with no intention or purpose to maintain or perpetuate segregation."

The Fourth Circuit Court of Appeals reached the same conclusions in *Gilliam* v. *School Board of the City of Hopewell, Va.*, 345 F. 2d 325, which involved a neighborhood school plan which inevitably resulted in some all-Negro schools because of "the fact that the surrounding residential areas are inhabited entirely by Negroes." In rejecting the objections thereto, the court said:

"The plaintiffs object that the result of the geographic zoning is a large measure of de facto segregation. It is true that it is, but this is because of the residential segregation that exists.

. . .

"The Constitution does not require the abandonment of neighborhood schools and the transportation of pupils from one area to another solely for the purpose of mixing the races in the schools."

Deal v. *Cincinnati Board of Education*, 369 F. 2d 55, decided by the Sixth Circuit Court of Appeals on Decem-

ber 6, 1966, is also to the same effect. In it, the appellants posed the question—

> "Whether the neighborhood system of pupil placement, fairly administered without racial bias, comports with the requirements of equal opportunity if it nevertheless results in the creation of schools with predominantly or even exclusively Negro pupils."

In responding, the court said:

> "The neighborhood system is in wide use throughout the nation and has been for many years the basis of school administration. This is so because it is acknowledged to have several valuable aspects which are an aid to education, such as minimization of safety hazards to children, in reaching school, economy of cost in reducing transportation needs, ease of pupil placement and administration through the use of neutral, easily determined standards, and better home-school communication. The Supreme Court in *Brown* recognized geographic districting as the normal method of pupil placement and did not foresee changing it as the result of relief to be granted in that case.
>
> . . .
>
> "Because of factors in the private housing market, disparities in job opportunities, and other outside influences (as well as positive free choice by some Negroes), the imposition of the neighborhood concept on existing residential patterns in Cincinnati creates some schools which are predominantly or wholly of one race or another. Appellants insist that this situation, which they concede is not the case in every school in Cincinnati, presents the same separation and hence the same constitutional violation condemned in *Brown*. We do not accept this contention. *The element of inequality in Brown was the unnecessary restriction on freedom of choice for the individual, based on the fortuitous, uncontrollable, arbitrary fac-*

tor of his race. The evil inherent in such a classification is that it fails to recognize the high value which our society places on individual worth and personal achievement. Instead, a racial characterization treats men in the mass and is unrelated to legitimate governmental considerations. It fails to recognize each man as a unique member of society.

"In the present case, the only limit on individual choice in education imposed by state action is the use of the neighborhood school plan. Can it be said that this limitation shares the arbitrary, invidious characteristics of a racially restrictive system? We think not. In this situation, while a particular child may be attending a school composed exclusively of Negro pupils, he and his parents know that he has the choice of attending a mixed school if they so desire, and they can move into the neighborhood district of such a school. This situation is far removed from *Brown*, where the Negro was condemned to separation, no matter what he as an individual might be or do. Here, if there are obstacles or restictions imposed on the ability of a Negro to take advantage of all the choices offered by the school system, they stem from his individual economic plight, or result from private, not school, prejudice. We read *Brown* as prohibiting only enforced segregation." (Emphasis supplied).

The Sixth Circuit Court of Appeals, on February 10th, 1969, reaffirmed its holding in *Deal.* In *Goss* v. *Board of Education, City of Knoxville, Tennessee,* 406 F. 2d 1183, it had this to say of a plan which required each student to be assigned to the school in the district in which he or she resides:

"Preliminarily answering question I, it will be sufficient to say that the fact that there are in Knoxville some schools which are attended exclusively or predominantly by Negroes does not by itself establish that the defendant Board of Education is violating the constitutional rights of the school children of

Knoxville. Deal v. Cincinnati Bd. of Education, 369 F. 2d 55 (6th Cir. 1966), cert. denied, 389 U.S. 847, 88 S. Ct. 39, 19 L. Ed. 2d 114 (1967); Mapp v. Bd. of Education, 373 F. 2d 75, 78 (6th Cir. 1967). Neither does the fact that the faculties of some of the schools are exclusively Negro prove, by itself, violation of *Brown*."

Deal has been recently again before the Sixth Circuit Court of Appeals, with the same result. In an opinion handed down March 23, 1970, which can be found in 419 F. 2d at 1387 et seq., it said:

> "It is the contention of appellants that the Board owed them a duty to bus white and Negro children away from the districts of their residences in order that the racial complexion would be balanced in each of the many public schools in Cincinnati. It is submitted that the Constitution imposes no such duty."

And in its opinion the court agreed with our answer to the argument that the rule enunciated in *Bell* and followed in *Downs, Gilliam, Deal, Goss* and others, was changed by what the Supreme Court said in *Green, Raney* and *Monroe*. After stating that:

> "In the first appeal which involved a claim of alleged de facto rather than de jure segregation, we affirmed the judgment of the District Court on the issue of racial imbalance, holding that the Board of Education was not required by the Constitution to bus Negro or white children out of their neighborhoods, or to transfer classes, for the sole purpose of alleviating racial imbalance which was not caused by any act of discrimination on the part of the Board but resulted from the racial concentrations in the neighborhoods in which the schools were located,"

the court went on to say:

> "Appellants petitioned the Supreme Court for certiorari in the first appeal and it was denied. Cer-

tiorari was also denied in *Downs* and *Bell*, supra. The denial of certiorari in the present case ought to constitute our opinion in the first appeal as the law of the case, but appellants contend that the law has been changed by the recent decisions of the Supreme Court in Green v. County School Bd. of New Kent County, 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968); Raney v. Bd. of Educ. of Gould School District, 391 U.S. 443, 88 S. Ct. 1967, 20 L. Ed. 2d 727 (1968); Monroe v. Bd. of Comm'rs of City of Jackson, 391 U.S. 450, 88 S. Ct. 1700, 20 L. Ed. 2d 733 (1968)."

But, said the court:

"In our opinion, these three decisions did not change any law applicable to our case and appellants' reliance on them is misplaced. The gist of the holdings in these cases was that in desegregating a dual school system, a plan utilizing 'freedom of choice' or a variant 'free transfer' is not an end in itself and would be discarded where it did not bring about the desired result."

And there are numerous district court cases which hold that de facto segregation, which occurs fortuitously because of housing patterns, does not make an otherwise acceptable desegregation plan unconstitutional—even some from district courts in the Fifth Circuit.[1] There are even cases from the Court of Appeals for the Fifth Circuit to that effect.[2] But, seemingly without exception, the Court of Appeals for the Fifth Circuit rules to the contrary when dealing with a plan originating with a Mississippi school district.

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1. *Griggs* v. *Cook*, 272 F. Supp. 163; *Moses* v. *Washington Parish School Board*, 276 F. Supp. 834; *Augustus* v. *School Board of Escambia County, Florida*, 299 F. Supp. 1069; *Mannings* v. *Board of Public Instruction of Hillsborough County, Fla.*, 306 F. Supp. 106.

2. *Ellis, et al.* v. *The Board of Public Instruction of Orange County, Fla.*, 423 F. 2d 203; *Carr* v. *Montgomery County Board of Education*, not yet reported; *Bivens, et al.* v. *Bibb County Board of Education* and *Thomie, et al.* v. *Houston County Board of Education*, not yet reported.

There is, of course, some de facto segregation in Mississippi; although probably less than in any other state of the Union. Where it is found, it is the result of the housing patterns in the community. But those housing patterns did not result from any state law or local ordinance. Mississippi has never had a law requiring residential segregation. Nor has any municipality of the state had such an ordinance.

Our former laws requiring the segregation of pupils by race in our public schools (which were perfectly constitutional before 1954) did not create or result in all-Negro or all-white neighborhoods. They had, in fact, no preceptible effect on housing patterns as they developed in Mississippi. Everyone familiar with Mississippi during the ante-*Brown* days knows full well that Negroes and whites then lived indiscriminately throughout the towns of the State. Whites frequently chose to live not too far from Negro schools. Negroes often lived within the shadows of a white school. Neither laws nor customs dictated otherwise. Those are facts so well known that a court can take judicial knowledge of them.

It was sometime during the 50's that Negroes who lived in predominantly white neighborhoods began to move —in some of our towns—into all-Negro neighborhoods. The movement seemed to have developed in and of itself, with no urgings or promptings by anyone. Every perceptive person realized that the Negroes were simply expressing their wish to live among their own kind. In any event, where there are all-white or all-Negro neighborhoods in Mississippi, the same have resulted from the voluntary movement of the Negroes of the community from the white sections into the Negro sections of the towns. That is also a fact well known to everyone who has lived in this state during the past twenty years.

We live in a pluralistic society. Our communities are as diverse as the races and the ethnic groups which populate them. All-white communities abound in sections outside the South. A few all-Negro communities can be found in the South. Towns made up of French-speaking citizens exist in Louisiana. Scandinavian groups compose communities located in the Mid-West. Perhaps the same can be said about German and Italian groups. For this country has provided a refuge for those of every race and nationality, with no restrictions on where they should settle. And since like attracts like, our various racial and ethnic groups have inevitably moved into those communities which numbered among their inhabitants those of their own group and have shunned those communities which do not have those of their background. For instance, while Mississippi has, along with its many Anglo-Saxons, those of German and Italian stock, it has no Scandinavians or Poles. It has Chinese but not Japanese. Other illustrations could be given.

Where communities have sizable facial or ethnic groups, those groups tend to congregate in identifiable sections of their community. In parts of Boston, none but Irish can be found. The same can be said of New York, which also includes sections composed exclusively of Italians. In San Francisco, Chinese have their own part of the city. Those are but examples of a phenomena well known to those familiar with American communities.

Negroes have the same tendencies as the white groups. Where they form a sizable proportion of the population, whether it be in the South, North, East or West, they naturally, and of their own volition, create their own neighborhood. It can be safely said that there is not a community in this country where Negroes, if there are enough of them, do not congregate into a particular section

of their community. The instincts which motivate their white counterparts to do so, also impel Negroes to live together.

There is some de facto segregation in the larger communities of Mississippi, just as there is in every community of any size in this nation where there is a sizable proportion of Negro population. Given the housing patterns which prevail in towns and cities throughout the country, any other result would be inconceivable. But the de facto segregation found in Mississippi is fortuitous de facto segregation and not the result of any law or ordinance. It is, in every essential respect, the same type of de facto segregation as prevails in Gary, Indiana, which was before the court in *Bell;* as prevails in Kansas City, Kansas, which was before the court in *Downs;* as prevails in Hopewell, Virginia, which was before the court in *Gilliam;* as prevails in Cincinnati, Ohio, which was before the court in *Deal;* as prevails in Knoxville, Tennessee, which was before the court in *Goss* v. *Board of Education, City of Knoxville, Tennessee,* 406 F. 2d 1183; as prevails in Atlanta, Georgia, which was before the court in *Griggs* v. *Cook,* 272 F. Supp. 163, 384 F. 2d 705; as prevails in Washington Parish, Louisiana, which was before the court in *Moses* v. *Washington Parish School Board,* 276 F. Supp. 834; as prevails in Orange County, Florida; Bibb County, Georgia; Houston County, Georgia; Atlanta, Georgia; Escambia County, Florida; St. Tammany Parish, Louisiana; which were before the courts in the cases above referred to, and as prevails in numerous other communities whose plans have been validated by the courts even though they encompassed areas where de facto segregation prevailed.

Where such de facto segregation exists, and a district's zones are set up as they should be: through the drawing of reasonable, rational and nonracial lines, with-

out regard to the race of the pupils enclosed thereby, there will be, of necessity, some all-black and some all-white schools. There is no escape from such an inevitable result, except the racist solution that children should be arbitrarily assigned to schools by race in order to create a racially balanced school. But we submit that neither race, nor religion, should be acknowledged as constituting in any way a valid condition or measure, in this nation, of a person's access to public facilities, positions or activities of any sort. Those who would make it such ought to be rejected with finality because, in racial matters, enduring progress and justice will come about only under rules of law which unswervingly treat all men as equal before the law, regardless of race, color or national origin, and which do not take into account their race, color or national origin.

The Civil Rights Act of 1964 Validates Bona Fide Neighborhood School Lines and Prohibits Court Orders Intended to Alleviate Racial Imbalance in Neighborhood Schools

As we have pointed out, *Bell* v. *School City of Gary* holds that de facto segregation which occurs fortuitously because of housing patterns is not unconstitutional. Now we point out that the gist of that holding was incorporated into the *Civil Rights Act of 1964*. This is clear from the language of Senator Humphrey, floor manager of the bill, as quoted in *Jefferson I* (372 F. 2d 836):

"Senator Humphrey explained:

" 'Judge Beamer's opinion in the *Gary* case is significant in this connection. In discussing this case, as we did many times, *it was decided to write the thrust of the court's opinion into the proposed* substitute.' (Emphasis added.)

. . .

"'*The bill does not attempt to integrate the schools,* but it does attempt to eliminate segregation in the schools. The natural factors, such as density of population, and the distance that students would have to travel are considered legitimate means to determine the validity of a school district, *if the school districts are not gerrymandered, and in effect deliberately segregated. The fact that there is a racial imbalance per se is not something which is unconstitutional.* That is why we have attempted to clarify it with the language of Section 4.' (Emphasis added)."

The pertinent provisions of the *Civil Rights Act of 1964* are, of course, *Sections 401, 407* and *410* which read as follows:

"Sec. 401. As used in this title—

"(b) 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegration' shall not mean the assignment of students to public schools in order to overcome racial imbalance.

. . .

"Sec. 407. . . .

". . . nothing herein shall empower any official or court of the United States to issue any orders seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance.

. .

"Sec. 410.

"Nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin."

Although the Court of Appeals for the Fifth Circuit, by its later actions in cases such as the Clarksdale case which has been referred to, repudiated, in effect, its earlier holding, that court, in *Jefferson I*, recognized that the foregoing provisions of the *Civil Rights Act of 1964* validated bona fide neighborhood schools, even though accompanied by racial imbalance resulting from housing patterns. After defining the latter part of *Section 401*—

> "but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance,"

that court, in *Jefferson I*, said:

> "The negative portion starting with 'but', excludes assignment to overcome racial imbalance, that is acts to overcome de facto segregation."

In support of its conclusion that the prohibition in *Section 407* against assignment of students to overcome racial imbalance was related solely to racial imbalance resulting from de facto segregation, that Court, in *Jefferson I*, went on to say this about the undefined term "racial imbalance":

> "It is clear however from the hearings and debates that Congress equated the term, as to commentators, with 'de facto segregation' that is, nonracially motivated segregation in a school system based on a single neighborhood school for all children in a definable area."

In recognition of the fact that "classification and assignment for reasons other than race, color, religion, or national origin," as used in *Section 410*, includes classification and assignment on the basis of residence, that Court, in *Jefferson I*, said:

> "The thrust of the *Gary* case (Bell) was that if school districts were drawn without regard to race,

> but rather on the basis of such factors as density of population, travel distances, safety of the children, costs of operating the school system, and convenience to parents and children, those districts are valid even if there is a racial imbalance caused by discriminatory practices in housing."

In *Deal* v. *Cincinnati Board of Education* (419 F. 2d 1387), the Court of Appeals for the Sixth Circuit said the same thing, when, in answering the contention of appellants—

> "that the Board owed them a duty to bus white and Negro children away from the districts of their residences in order that the racial complexion would be balanced in each of the many public schools in Cincinnati,"

it said:

> "It is submitted that the Constitution imposes no such duty."

And then went on to say:

> "In the Civil Rights Statute, Congress has expressed itself rather clearly on this subject in 42 U.S.C. §§ 2000 c, 2000 c-6 and 2000 c-9."

It follows from the express words of the *Civil Rights Act of 1964* that attendance areas or zones are valid even if there is a racial imbalance therein, and that courts are without authority to issue any order designed to achieve a racial balance in schools.

The Fourteenth Amendment Is Prohibitory Only, and What It Prohibits Is Racial Classifications by Law

The questions before the court must turn upon the proper construction of that provision of the Fourteenth Amendment which reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is fundamental that for there to be a violation of the Fourteenth Amendment in the respect here under consideration, there must appear a denial by a state of equal protection of its laws. There can be no doubt as to what the Congress intended by the use of the word "State" in the Fourteenth Amendment. The word "State" or "States" had been used seventy times in the original Constitution. Furthermore, there can be no doubt as to what the Congress meant by the word "laws." The word "law" or "laws" as meaning statute or statutes enacted by a legislative body, state or federal, had been used twenty-five times in the Constitution.

At the October, 1875, Term of this Court, just seven years after the adoption of the Fourteenth Amendment, when it first became necessary for the courts to construe or apply it, the Supreme Court spoke certainly and clearly:

> The fourteenth amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it, and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. The duty was originally assumed by the States; and it still remains there. *The only obligation resting upon the United States is to see that the States do not deny the right.*

> *This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty.*[3]

In 1896, this court, in the landmark case of *Plessy* v. *Ferguson*, 163 U.S. 537, 41 L. Ed. 256, decided that a Louisiana statute requiring the segregation of the races on public carriers did not violate the Fourteenth Amendment. Mr. Justice Harlan voiced a strong dissent. He urged that the Constitution must be color-blind.

> "In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. . . . I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved.
>
> "These notable additions to the fundamental law (the 13th, 14th and 15th Amendments to the Constitution of the U. S.) were welcomed by the friends of liberty throughout the world. They removed the race line from our governmental systems.
>
> . . .
>
> "There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. . . . The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved."

When the transfer provisions incorporated into the desegregation plans of the public school systems of Knoxville, Tennessee, which were based solely on racial factors, came on for review in *Goss* v. *Board of Education*, 373 U.S. 683,

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3. *United States* v. *Cruikshank*, 92 U.S. 542, 554-55. (Emphasis added.)

10 L. Ed. 2d 632, this Court, in invalidating them, borrowed from the language in one of its prior decisions to say—

> "Racial classifications are 'obviously irrelevant and invidious.' "

And then went on to capsulize a history of those of its decisions which demonstrated its animosity toward racial classifications:

> ". . . The cases of this Court reflect a variety of instances in which racial classifications have been held to be invalid, e.g., public parks and playgrounds, Watson v. Memphis, 373 U.S. 526, 10 L. Ed. 2d 529, 83 S. Ct. 1314 (1963); trespass convictions, where local segregation ordinances pre-empt private choice, Peterson v. Greenville, 373 U.S. 244, 10 L. Ed. 2d 323, 83 S. Ct. 1119 (1963); seating in courtrooms, Johnson v. Virginia, 373 U.S. 61, 10 L. Ed. 2d 195, 83 S. Ct. 1053 (1963); restaurants in public buildings, Burton v. Wilmington Parking Authority, 365 U.S. 715, 6 L. Ed. 2d 45, 81 S. Ct. 856 (1961); bus terminals, Boynton v. Virginia, 364 U.S. 454, 5 L. Ed. 2d 206, 81 S. Ct. 182 (1960); public schools, Brown v. Board of Education, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686, 38 A.L.R. 2d 1180, supra; railroad dining car facilities, Henderson v. United States, 339 U.S. 816, 94 L. Ed. 1302, 70 S. Ct. 843 (1950); state enforcement of restrictive covenants based on race, Shelley v. Kraemer, 334 U.S. 1, 92 L. Ed. 1161, 68 S. Ct. 836, 3 A.L.R. 2d 441 (1948); labor unions acting as statutory representatives of a craft, Steele v. Louisville & N. R. Co., 323 U.S. 192, 89 L. Ed. 173, 65 S. Ct. 226, supra; voting, Smith v. Allwright, 321 U.S. 649, 88 L. Ed. 987, 64 S. Ct. 757, 151 A.L.R. 1110 (1944); and juries, Strauder v. West Virginia, 100 U.S. 303, 25 L. Ed. 664 (1879)."

It followed with a gist of a decision by the Court of Appeals for the Fifth Circuit:

> ". . . *The recognition of race* as an absolute criterion for granting transfers which operate only in the

direction of schools in which the transferee's race is in the majority *is no less unconstitutional* than its use *for original admission* or subsequent assignment *to public schools.* See Boson v. Rippy, 285 F. 2d 43 (C.A. 5th Cir.)." (Emphasis added.)

In that case which this Court cited with approval, the Court of Appeals for the Fifth Circuit said:

". . . Negro children have no constitutional right to the attendance of white children with them in the public schools. Their constitutional right to 'the equal protection of the laws' is the right to stand equal before the laws of the State; that is, to be treated simply as individuals without regard to race or color. The dissenting view of the elder Mr. Justice Harlan in Plessy v. Ferguson, 1895, 163 U.S. 537, 559, 16 S. Ct. 1138, 1146, 41 L. Ed. 256, has been proved by history to express the true meaning of our Constitution:

"'. . . There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as quaranteed by the supreme law of the land are involved.'"

An Ohio federal court in 1964, in *Lynch* v. *Kenston School Dist. Bd. of Educ.*, 229 F. Supp. 740, related the principle of color-blindness to the problem of de facto segregation in education:

"In this cause of action the plaintiffs are requesting the Court to do what the Constitution forbids, that is, to recognize their color and to order them admitted to a school because of that color. Plaintiffs have a constitutional right not to be objects of racial discrimination, and they can vindicate that right in an action before this Court, but they do not have a constitutional right to attend or to refrain from attending a partic-

ular school on the basis of racial considerations when there has been no actual discrimination against them. The law is color-blind and, in cases such as this, that principle, which was designed to insure equal protection to all citizens, is both a shield and a sword. While protecting them in their right to be free from racial discrimination, it at the same time denies them the right to consideration on a racial basis when there has been no discrimination."

In *Holland* v. *Board of Public Education*, 258 F. 2d 730, the Fifth Circuit Court of Appeals described as a principle which it had announced in several of its decisions, "that the Fourteenth Amendment does not speak in positive terms to command integration, but negatively, to prohibit governmentally enforced segregation."

Evans v. *Buchanan*, 207 F. Supp. 821, from the District Court of Delaware, was an action by nine Negro children for an order transferring them from the all-Negro Dunleith School to the integrated Rose Hill Elementary School. In deciding the case, the court said:

"The court holds that the States do not have an affirmative, constitutional duty to provide an integrated education. The pertinent portion of the Fourteenth Amendment of the United States Constitution reads, 'nor (shall any State) deny any person within its jurisdiction the equal protection of the laws.' This clause does not contemplate compelling action; rather, it is a prohibition preventing the States from applying their laws unequally."

Bell, supra, was decided by the Seventh Circuit Court of Appeals, on the basis of what the three-judge court said in carrying out the directives of *Brown*:

"Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color."

In *Bradley* v. *School Board of City of Richmond, Va.*, 345 F. 2d 310 (April 7, 1965), the Fourth Circuit Court of Appeals said:

> "It has been held again and again, however, that the Fourteenth Amendment prohibition is not against segregation as such. The proscription is against discrimination."

In *Springfield School Committee* v. *Barksdale*, 348 F. 2d 261 (July 12, 1965), while the First Circuit Court of Appeals held that it was permissible for a school board to take action to eliminate racial imbalance in its schools, it said:

> "Certain statements in the opinion, notably that 'there must be no segregated schools,' suggest an absolute right in the plaintiffs to have what the court found to be 'tantamount to segregation' removed at all costs. *We can accept no such constitutional right.*"

There are literally dozens of other cases, from every section of the country, in which the same understanding of the Fourteenth Amendment is expressed. And, of course, there are some to the contrary.

Clearly, then, the ultimate legitimacy of racial balancing in the public schools will depend upon the choice that this Court makes between the mutually exclusive goals of color-blindness and color-consciousness. In arguing for what we consider to be the correct choice, it will not be sufficient to cite the rhetoric and holdings of courts, or the original intentions of the framers of the fourteenth amendment. Rather, it is essential to have recourse to the fundamental merits of the question.

We submit that the policy of racial balancing in pupil assignment to public schools is erroneous in theory and pernicious in effect. The policy of legal segregation, of "separate but equal" facilities for the races, was, whatever

its constitutionality, self-defeating and degrading for citizens of all races. A more difficult question, however, is that of replacing the "separate but equal" rationale with an enduring principle of even-handed fairness. Here, we ought to follow the suggestion of Mr. Justice Harlan, dissenting in *Plessy* v. *Ferguson*, that "our Constitution is color-blind, and neither knows nor tolerates classes among citizens." At this stage in our societal and constitutional development, we ought to realize that racial discrimination is morally evil. This is undeniably true at least where such discrimination is imposed by law. It is wrong, not because it does not work, but because it violates the equal dignity of all men before God and the law. What the racial balancers tell us, however, is that their brand of discrimination, of racial classification, is different, that it is good because they count themselves as benevolent and because they have in view an end, integration, which they regard as a useful and even compelling good. And they buttress their case by the ready testimony of social scientists and publicists who affirm, in learned terms, the dangers of racial separation and the benefits to all concerned which would arise from compulsive commingling.

It does not unfairly dramatize the point to observe that the racial theories which prevailed in Nazi Germany were not lacking pretentious support from social scientists, and were of course legitimized as a means to attain a desirable end. Moreover, tides and fads in the so-called social sciences do ebb and flow. If the newly-secured rights to racial justice under law are to endure, they must be immunized from any experimentation premised upon the supposition that American citizens can be legitimately divided and classified for any reason on racial grounds.

Nor is racial balancing essential for the improvement of public education. There is no necessary correlation between integration as such and the quality of education

received in a school. Indeed, a precipitate pursuit of integration as a goal in itself can inhibit the improvement of educational standards. Moreover, there is reason to believe that the shifting of pupils from one school to another, especially in disregard of the common-sense, racially neutral advantages of neighborhood schools, can lead to an increase in the rebellion and violence which we have come to regard as ordinary in some public school systems. When racial balancing involves, as it inevitably must, a compulsory movement of grade-school children away from the public school which otherwise would serve their normal neighborhood, it does so at the expense of a further weakening of that parental supervision which is an important ingredient in the conduct of a primary school. It represents, symbolically at least, a further aggrandizement of the state, which thereby asserts its primacy in the field of education, a primacy which, not incidentally, finds its expression in schools in which there can be no official recognition that in fact there is a divine standard of right and wrong higher than the state itself.

But the basic objection to racial balancing does not depend upon the distances involved. Rather, the vice is the classification by *race*.

Interestingly, the entire concept of racial balancing carries with it an inevitable implication that Negroes are inferior. This concept implies that the presence of white children automatically raises the quality of a school and that a preponderance of Negro pupils automatically lowers it. The Negro is the only minority group singled out for such treatment. Regardless of its beneficent purpose, the ruling carries the individious implication that Negroes necessarily tend to make a school inferior and, therefore, that in some undefined way Negroes are themselves inferior. It would seem that this is a denial of the Negro's equality under the law.

But, of course, the controlling factor in this Court's choice between the requirements of color-blindness and color-consciousness must be this Court's interpretation of the meaning of the Fourteenth Amendment as applied to this question: Does the Fourteenth Amendment require a "racial balance" in each of the public schools of the nation, which in turn requires the establishment of school systems based on color distinctions and the assignment of pupils to schools on the basis of their race? We submit that an affirmative answer would not be the true interpretation of our Constitution. It would involve, in fact, a repudiation of the basic premise that the Constitution of the United States does not permit public authorities to know, or to take into account, the race of citizens when their civil rights are involved, and it would actually validate the premise on which the "separate-but-equal" doctrine was bottomed. It would simply be a fallacious interpretation of the true meaning of our Constitution.

What we have just said should not be equated with a segregationist's argument. All we are saying is that integration *per se* should not be the *sine qua non* of a desegregation plan. It is not a contention that a school board is not required to compel compulsory association of the races if such be necessary for the purpose of desegregating its schools. For instance, we agree that where there are racially mixed neighborhoods which include pupils of both races who, within the limits of normal geographical limits, would naturally be assigned to the same school, the school board must require all in that neighborhood, both white and black, to attend the same school. *That is exactly what the Clarksdale plan does. Every pupil, both white and black, in every mixed neighborhood of the district is required by the Clarksdale plan to attend the same school.*

School Desegregation Requirements Should Be Uniform Throughout the Nation

It is a well known fact that plans such as the Clarksdale desegregation plan—which provides for the creation of attendance areas or zones fairly arrived at, bounded by natural, nonracial monuments which define, in truth and in fact, true neighborhoods, and directs that all children living in such an attendance area or zone, without exception, should attend the appropriate school in his or her attendance area or zone—are in force and effect throughout the United States and have either the express or tacit approval of the federal courts, even though, as a result of the housing patterns in those communities, the plan inevitably produces some all-white and some all-black schools. In other words, it is a notorious fact that requirements for school desegregation are not uniformly applied throughout the nation. In the Fifth Circuit, they are not uniformly applied throughout the circuit.

We submit that there should be no such thing as a federal system of regional laws. We submit that no state should be judicially declared to be a "bad" state or a "good" state. Or are states which today are lawfully carrying on their affairs to be punished tomorrow if this Court declares a new concept of Constitutional law, thereby invalidating such state action? We think Mr. Justice Thurgood Marshall expressed the proposition about as well as it can be expressed when, in argument to this Court while serving as counsel for the plaintiffs in the original *Brown* case, he stated:

> "The next point I want to make on the general side is what I made before, and that is the need for uniform application of our Constitution and all of its provisions throughout the Country so that freedom of the press won't mean one thing in one State and

> another thing in another state, so that all of these rights in the Constitution—It has never been said on any other right that I know of that special exceptions should be made as to one state or the other."

We concur with Mr. Justice Marshall on that point.

The theory that the "South" must pay its price for having, pursuant to what was then recognized without question as the law of the land, segregated the races in its schools was expressly rejected by the Sixth Circuit in *Monroe* v. *Board of Commissioners of the City of Jackson, Tennessee,* in this language:

> "However ugly and evil the biracial school systems appear in contemporary thinking, they were, as Jefferson, supra, concedes, de jure and were once found lawful in Plessy v. Ferguson, 163 U.S. 537 (1896), and such was the law for 58 years thereafter. To apply a disparate rule because these early systems are now forbidden by Brown would be in the nature of imposing a judicial Bill of Attainder. Such proscriptions are forbidden to the legislatures of the states and the nation —U. S. Const. Art. I, Section 9, Clause 3 and Section 10, Clause 1. Neither, in our view, would such decrees comport with our current views of equal treatment before the law."

Dr. James Bryant Conant in *Slums and Suburbs* has a most fair-minded approach to the question when he says:

> "As I read the history of the United States, this Republic was born with a congenital defect—Negro slavery."

According to Dr. Conant this defect was allowed, as a National Policy, to continue after the Civil War.

> "The present situation is a consequence of a National Policy, or rather the lack of a National Education Policy, which has persisted for generations."

This lack of a National Education Policy has now been cured by the adoption of the Elementary and Secondary Education Act of 1965.

Dr. Conant's evaluation of the current problem is far more reasonable than that presented by the finger-pointing approach. The distinction between "de jure" segregation and "de facto" segregation begs the question. It is unworthy of the federal judiciary.

Congress, when it adopted the Green Amendment, which requires that *the guidelines shall be uniformly applied and enforced throughout the fifty states,* placed itself on record for uniform desegregation requirements throughout the nation.

Surely this argument of the Congresswoman from Oregon is unanswerable:

> "On the basis of equity—fairness—and justice in this land, I urge the adoption of this amendment so that it will be clear that we are saying to the Office of Education that the Congress of the United States intends that any rules and regulations or guidelines will be administered the same in Mississippi as they are in Oregon;
>
> "That they will be administered the same in Virginia as they are in New Jersey;
>
> "The same in Maryland as they are in Pennsylvania—and to stop this nonsense of picking out one part of the country and singling out that part of the country for separate treatment."

A School's Faculty Should Not Be Chosen on a Racial Basis

What has been said herein with respect to classification of pupils by race, and the assignment of pupils to schools on a racial basis, applies with equal force to the

teachers in our public schools. They should not be classified by race, and their employment to teach should not be made to depend on their race, color, creed or national origin.

When school boards are saddled with racial quotas for faculties, they necessarily have to condition their employment of teachers on their race or color. If a board has a sufficient number of black teachers to meet its quota requirements for a particular school, and there are vacancies to be filled, it must refuse to employ a qualified black teacher who applies for the position simply because he or she is black. The converse of that statement is also true.

Again we say, race, as religion, ought never to be acknowledged as constituting in any way a valid condition or measure, in this nation, of a person's access to public facilities, positions or activities of any sort. Those who would make it such ought to be rejected, whatever their intentions, with the finality reserved for those who would play God with the human race.

Summary of Argument

The mandate of *Brown* was, and is—

a) To cease the practice of segregating children solely *on the basis of race;*

b) To revise school districts and attendance areas "into compact units";

c) "To achieve a system of determining admissions to the public schools *on a nonracial basis*"; and

d) To create *"a system not based on color distinctions."*

The subsequent decisions of this Court have not changed the directives of *Brown*. *Green, Raney* and *Monroe* had to do with the constitutionality of "freedom-of-choice" plans and dealt with facts entirely dissimilar from

those involved in the plan of a school district restructured in obedience to the commands of *Brown*. The order in *Alexander*, which proscribed a school system *based on race or color*, and which called for a school system within which *no person is to be effectively excluded from any school because of race or color*, is in exact accord with the commands of *Brown*.

The *Civil Rights Act of 1964*, in which "desegregation" is defined to mean the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, and not to mean the assignment of students to public schools in order to overcome racial imbalance, and which prohibits a court from issuing an order seeking to achieve racial balance in any school, and which validates assignments for reasons other than race, color, religion or national origin, is further confirmation of the validity of what this Court said in *Brown*.

Brown, the subsequent school decision of this Court, and the *Civil Rights Act of 1964*, all carry out the proper construction of the Fourteenth Amendment to the Constitution of the United States, which is probably best summarized by this quotation from the dissenting opinion of Mr. Justice Harlan in *Plessy* v. *Ferguson*:

> "There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. . . . The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved."

Hence a desegregation plan formulated in obedience to the commands of *Brown*, i.e., a desegregation plan which provides for the creation of attendance areas or zones fairly

arrived at, bounded by natural, nonracial monuments which define, in truth and in fact, true neighborhoods, and directs that all children living in such an attendance area or zone, without exception, should attend the appropriate school in his or her attendance area or zone, is constitutional, even though the concentration of children of one race in particular areas or zones results in racial imbalance in the schools and in some all-white and some all-black schools.

For the same reasons that racial classifications of pupils, and assignment of pupils by race, should be prohibited as contrary to the equal protection clause of our federal constitution, classification of teachers by race, and employment of teachers on a racial basis, should be prohibited.

Since this is a nation composed of sovereign states, governed by the same Constitution, school desegregation requirement, which must be rooted in the Constitution, must apply, and be enforced, uniformly throughout the country.

CONCLUSION

The State of Mississippi, amicus curiae, submits that the questions presented in this and companion cases, should be resolved by an opinion and order of this Court to the effect (a) that de facto segregation which occurs fortuitously because of housing patterns does not render an otherwise acceptable desegregation plan unconstitutional, (b) that racial balance is not required in neighborhood schools, (c) that courts are not authorized to require a school district to gerrymander its attendance area or zone lines so as to include pupils of a certain race within an attendance area or zone, who would not be included therein

if its attendance area or zone lines were drawn in a reasonable, rational and nonracial fashion, (d) that a school board should not be required to employ its faculties on a racial basis, and (e) that school desegregation requirements should be made uniform throughout the United States.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 436

Supreme Court, U.S.
FILED
OCT 6 1970
E. ROBERT SEAVER, CLERK

BIRDIE MAE DAVIS, et al.,
Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.

On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit

BRIEF

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St. Louis Law Printing Co., Inc., 411-15 N. Eighth St. 63101 314-231-4477

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 436

BIRDIE MAE DAVIS, et al.,
Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.

On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit

BRIEF

**For the Board of School Commissioners
of Mobile County**

"For almost a decade there have been judicial efforts to desegregate the schools of Mobile County, Alabama. We wonder when the epilogue will be written." . . . (Judge Goldberg, Opinion in Fifth Circuit number 27849, a collateral proceeding to the primary desegregation case.)

"I have said many times that the best thing that could happen would be for this litigation to come to an end. This is true. But I am unwilling to disregard all common sense and all thoughts of sound education, simply to achieve racial balance in all schools. I do not believe the law requires it. And this litigation will continue to be stirred as long as adequate funds are provided for those who want litigation for the sake of litigation, without regard to the rights of the children and parents involved. The Court has attempted as nearly as possible to comply with the mandate of the Appellate Courts and yet leave it humanly and educationally possible to operate the schools." . . . (Judge Daniel H. Thomas' Opinion attached as part of the January 31, 1970, District Court decree in this case.)

OPINIONS BELOW

The statement of opinions and orders of the courts below made by Petitioner does not include the following orders and opinions, which should be included:

1. Order of the district court filed January 22, 1970, granting the application for intervention of the Mobile County Council Parent-Teachers Associations, et al, unreported.

2. Order of the district court filed January 31, 1970 requiring the re-establishment of an elementary school on Dauphin Island, unreported.

3. Order of the district court filed August 12, 1970 requiring the pairing of Hamilton and Robbins schools, unreported.

4. Order of the district court filed August 12, 1970 appointing the bi-racial advisory committee, unreported.

QUESTIONS PRESENTED

In our brief for the Respondent responding to the petition for writ of certiorari, we opposed the granting of the writ as being unnecessary; consequently we made no specification of questions presented for review, other than with regard to the prayer for relief, pendente lite. We restate that specification here:

I. Under the immediate facts present in this case, should this school system, which is totally integrated and unitary in every respect (except for the existence, as the result of voluntary residential patterns, of two (2) schools with an all negro student body and five (5) schools with an all white student body, out of a total of eighty three (83) schools in the system), be subjected to another complete reorganization; by the summary adoption by this Court of another desegregation plan (Plan B-I Alternative, urged by Petitioner, pendente lite) that has been rejected by the District Court and the Court of Appeals as educationally unsound and functionally impossible of implementation, and comes to this Court completely unsupported by testimony in any form; to replace the present desegregation plan which was devised by the District Court and United States Department of Justice and the Office of Education of the Department of Health, Education and Welfare, and approved and adopted by the Fifth Circuit Court of Appeals.

* * * * * * * *

Now that the writ has been granted, Respondent is not entirely satisfied that the statement of questions presented for review now made by Petitioner in its present brief adequately presents all of the essential questions fairly raised by this case and now at issue before this Honorable Court. Accordingly, respondent respectfully makes this further specification of questions presented.

II. Does the Constitution of the United States require that the public school systems of the United States assign the teachers of the systems to the schools of the systems in such a manner as to achieve a racial balance of teachers in each school, or some other arbitrary mathematical ratio of black and white teachers in the schools of the system.

III. Does the Constitution of the United States require that the public school systems of the United States assign the students of the systems to the schools of the systems in such a manner as to achieve a racial balance of students or some arbitrary mathematical ratio of black and white students in the schools of the system.

A. Does the mere existence of a school with a student body made up of students all of one race, in a public school system that is otherwise completely integrated and unitary, render the school system constitutionally deficient:

(1) If the student body of such school is all black; or,

(2) If the student body of such school is all white?

B. Does the existence of two (2) schools that have all black student bodies and five (5) schools that have all white student bodies, in a school system of eighty-three (83) schools that is otherwise completely integrated and unitary, render the school system constitutionally deficient?

IV. Under the Constitution of the United States, do white public school students have the same right or an equal right as do black public school students, to the benefit and protection of the Constitution and of the laws of the United States; specifically the Equal Protection Clause of the Fourteenth Amendment, and the Civil Rights Act of 1964. If they do, then is it not Constitutionally sufficient that public school systems assign students to

schools on the basis of attendance zones that are fairly drawn to normal standards of educational soundness and upon the basis of non-racial criteria, in order to produce as nearly as possible a system of unitary neighborhood schools.

STATEMENT

I. General Introductory Information

The Mobile County Public School System is the largest school system in the State of Alabama, with a normal annual enrollment of approximately 79,000 students. The enrollment has steadily decreased since 1965 as a result of public dissatisfaction and other problems associated with the desegregation process. During the past school year (1969-70) total enrollment was 73,504, and this year total enrollment on September 14, 1970, the fourth day of school (the time that enrollment figures are normally recorded) is only 68,623; a further loss of almost 5000 students.

The school system is administered by a board of five commissioners elected from the county at large by popular vote in county wide elections. They serve without compensation. The board in turn employs professional administrative personnel, including a superintendent of schools who has a Ph. D. Degree from Columbia University. The system is a combined city-county system encompassing the entire county, which is largely rural, and every city and municipality in the county, the largest of which is the City of Mobile with a population of some 235,000 persons. Thus the School Board must deal with the whole spectrum of problems and difficulties inherent in the desegregation process, from those peculiar to small rural schools and systems, to those associated with affluent

suburban systems, to those found in large, compact metropolitan or urban systems.

During the past school year (1969-70) the School Board operated 89 schools and employed 2605 teachers; fifty nine per cent (59%) of these teachers were white and forty one per cent (41%) black. Student enrollment in the system is normally about sixty per cent (60%) white and forty per cent (40%) black.*[1]

II. Statement of the Facts

This case has been in litigation since 1963. At that time the school system was, in both a legal and a practical sense, a dual system, with blacks attending one set of schools and whites attending another. There was no student integration, no faculty integration and no integration of services, facilities, activities and programs. This once dual system has now been completely disestablished, and there now exists a unitary school system within which no person is effectively excluded from any school because of race or color; as per **Alexander v. Holmes County Board of Education,** 396 U.S. 19 (1969). The system is unitary in every aspect of its operation.

The course of the desegregation process from 1963 to the present is reflected in capsule form by the following statistical table:

---

*[1] The ratio was somewhat different during the 1969-70 school year owing to the disappearance of approximately 6,500 white students from the system, apparently as a result of their dissatisfaction with the School Board's implementation of the desegregation plans devised by the District Court and promulgated in its August 1, 1969 and January 31, 1970 Decrees. This year (1970-71) the disparity is even greater due to the loss of still more white students from the system.

	1962-63	1963-64	1964-65	1965-66	1966-67	1967-68	1968-69	1969-70	1970-71
Total number of schools	89	93	95	97	98	96	91	89	83
Total number of schools with a bi-racial student body	0	1	3	10	15	34	57	68	76
Total number of schools with biracial faculty	0	0	0	0	0	10	89	88 *1	82 *1
Total number of students enrolled in the system	73949	76615	78652	77887	77101	76090	75464	73504	68623
Total number of students enrolled in biracial schools	0	3056	4004	10474	15636	28558	47560	55314	64306

*1 The one school without bi-racial faculty is Dauphin Island School, a one teacher school on an island in the Gulf of Mexico.

The following statistical table illustrates the extent of faculty and student body integration in every school in the system based upon the desegregation plan placed into implementation upon the opening of school on September 9, 1970. This table also indicates the racial character of each school in the era of the dual school system, prior to the start of the desegregation process; and it indicates the racial make up of the administrative staff (principal and assistant principals) of each school.

NAME OF SCHOOL	RACIAL CHARACTER OF SCHOOL IN DUAL SYSTEM ERA	CURRENT (1970-71) RACIAL CHARACTER OF STUDENT BODY *6	1970-71 STUDENTS ASSIGNED B	1970-71 STUDENTS ASSIGNED W	1970-71 FACULTY ASSIGNED *5 B	1970-71 FACULTY ASSIGNED *5 W	1970-71 ADMINISTRATORS ASSIGNED B	1970-71 ADMINISTRATORS ASSIGNED W
ADAMS (CLEVELAND)	B	Bi-racial	293	687	16	25	1	1
ALBA	W	Bi-racial	179	1463	25(1)	38(1)		2
ARLINGTON	W	Closed						
AUSTIN	W	Bi-racial	14	384	5	7		1
AZALEA ROAD	W	Bi-racial	35	999	14(2)	24		2
BAKER	W	Bi-racial	94	984	14(3)	26		2
BARNEY (CHICKASAW TERRACE)	B	Closed						
BARTON	W	Closed						
BELSAW (MT.VERNON ELEMENTARY)	B	Bi-racial	209	26	4	3(4)	1	

NAME OF SCHOOL	RACIAL CHARACTER OF SCHOOL IN DUAL SYSTEM ERA	CURRENT (1970-71) RACIAL CHARACTER OF STUDENT BODY *6	1970-71 STUDENTS ASSIGNED B	W	1970-71 FACULTY ASSIGNED *5 B	W	1970-71 ADMINISTRATORS ASSIGNED B	W
BIENVILLE	W	Bi-racial*1						
BLOUNT	B	Bi-racial	1233	1041	36	41(12)	2	1
BRAZIER		B	1006		14	17(3)	1	
BROOKLEY	W	Bi-racial	71	490	7	10(1)		1
BURROUGHS	B	Bi-racial	242	188	6	9(1)	1	
CALCEDEAVER	W	Bi-racial*2		168	2	4½		1
CALDWELL	B	Bi-racial	307	11	6(½)	3½(6½)	1	
CALVERT	W	Closed						
CARVER	B	Bi-racial*3						
CENTRAL	B	Bi-racial	1563	231	24	27(8)	2	
CHICKASAW	W	Bi-racial	75	448	6	8(2)		1
CITRONELLE	W	Bi-racial	367	738	19(2)	31		2
CLARK	W	Bi-racial	903	687	23(1)	34(2)		2
COTTAGE HILL	B	Closed						
COUNCIL	B	Bi-racial	404	50	6(1)	8	1	
CRAIGHEAD	W	Bi-racial	516	242	11	16(1)	1	
CRICHTON	W	Bi-racial	144	352	7½	11(1)		1
DAUPHIN ISLAND	W	W*4		20		1*4		1
DAVIDSON	W	Bi-racial	78	2562	37(8)	66(2)		3
DAVIS		Bi-racial	176	613	9(1)	16		1
DAWES UNION	B	Closed						

NAME OF SCHOOL	RACIAL CHARACTER OF SCHOOL IN DUAL SYSTEM ERA	CURRENT (1970-71) RACIAL CHARACTER OF STUDENT BODY *6	1970-71 STUDENTS ASSIGNED B	W	1970-71 FACULTY ASSIGNED *5 B	W	1970-71 ADMINISTRATORS ASSIGNED B	W
DICKSON	W	Bi-racial	155	579	9	14		1
DIXON	B	Bi-racial	181	239	5	6(2)	1	
DODGE		Bi-racial	62	670	10	14		1
DUNBAR	B	Bi-racial	940	86	14	13(9)		2
EANES	W	Bi-racial	181	823	13(3)	23		2
EIGHT MILE	W	Bi-racial	103	556	9(1)	15		1
ELLICOTT	W	Closed						
EMERSON	B	Closed						
EVANS	W	Bi-racial	118	91	8	8		1
FONDE	W	Bi-racial	8	662	8	13		1
FONVILLE	B	Bi-racial	866	15	13	9(11)	1	
FOREST HILL	W	W		519	6	10		1
GLENDALE	W	Bi-racial	574	257	10	14(2)		1
GORGAS	W	Closed						
GRAND BAY		Bi-racial	152	667	9(1)	15(1)		1
GRANT	B	Bi-racial	1077	7	16	9(15)	1	
GRIGGS	W	Bi-racial	40	899	11	17		1
HALL	B	Bi-racial	852	190	18	23(4)	1	1
HAMILTON	W	Bi-racial	204	414	7	11		1
HILLSDALE	B	Bi-racial	228	493	12	17(1)	1	1
HOLLINGER'S ISLAND	W	Bi-racial	4	391	5	7		1
HOWARD (NORTHSIDE)	B	Closed						

NAME OF SCHOOL	RACIAL CHARACTER OF SCHOOL IN DUAL SYSTEM ERA	CURRENT (1970-71) RACIAL CHARACTER OF STUDENT BODY*6	1970-71 STUDENTS ASSIGNED B	W	1970-71 FACULTY ASIGNED *5 B	W	1970-71 ADMINISTRATORS ASSIGNED B	W
INDIAN SPRINGS		Bi-racial	11	507	6	9		1
LEE	W	Bi-racial	159	641	10	16		1
LEINKAUF	W	Bi-racial	252	194	6	8		1
LOTT	B	Bi-racial	132	413	8	11	1	
MARYVALE	W	Bi-racial	207	395	8	12		1
MERTZ	W	W		373	4	7		1
MOBILE COUNTY HIGH	W	Bi-racial	259	624	13(1)	22		2
MOBILE COUNTY TRAINING	B	Bi-racial	699	202	14	8(12)	2	
MON LOUIS ISLAND	W	Closed						
MONTGOMERY		Bi-racial	30	815	10(6)	24		2
MORNINGSIDE	W	W		674	8	11(1)		1
MOUNT VERNON	W	Bi-racial	318	80	5	4½(3)		1
MURPHY	W	Bi-racial	1546	1054	31(7)	58		3
OAKDALE	W	Closed						
OLD SHELL	W	Bi-racial	357	117	5	6(1)		1
ORCHARD	W	Bi-racial	113	758	10	15		1
OWENS	B	B	1479		20	13(17)	1	
PALMER (SNUG HARBOR)	W	Bi-racial	493	104	10	5(9)	1	

NAME OF SCHOOL	RACIAL CHARACTER OF SCHOOL IN DUAL SYSTEM ERA	CURRENT (1970-71) RACIAL CHARACTER OF STUDENT BODY *6	1970-71 STUDENTS ASSIGNED B	W	1970-71 FACULTY ASSIGNED *5 B	W	1970-71 ADMINISTRATORS ASSIGNED B	W
PHILLIPS	W	Bi-racial	820	364	18(1)	28	1	
PRICHARD	W	Bi-racial	566	187	12(1)	19	1	1
RAIN	W	Bi-racial	111	1155	23	35		2
ROBBINS		Bi-racial	702	129	9(1)	12(2)	1	
RUSSELL	W	Closed						
ST. ELMO	B	Bi-racial	49	426	8	11(2)	1	1
SARALAND	W	Bi-racial	35	759	9	13		1
SATSUMA	W	Bi-racial	198	919	17(3)	30(1)		2
SCARBOROUGH		Bi-racial	11	773	13	19(1)		2
SEMMES	W	Bi-racial	23	989	13(2)	23		2
SHAW		Bi-racial	228	1293	21(4)	38		2
SHEPARD	W	Bi-racial	26	418	4(2)	8		1
SOUTHSIDE	B	Closed						
STANTON ROAD	B	Bi-racial	894	4	13	17(2)	1	
TANNER WILLIAMS	W	Bi-racial	9	345	3(2)	7		1
THEODORE	W	Bi-racial	339	1516	25(6)	47		2
THOMAS	B	Bi-racial	74	160	3½	5		1
THOMPSON	B	Closed						
TOULMINVILLE	W	Bi-racial	454	247	12	14(3)	2	
TRINITY GARDENS	B	Bi-racial	969	171	15	17(6)	2	
TURNERVILLE	W	Closed						

NAME OF SCHOOL	RACIAL CHARACTER OF SCHOOL IN DUAL SYSTEM ERA	CURRENT (1970-71) RACIAL CHARACTER OF STUDENT BODY *6	1970-71 STUDENTS ASSIGNED B	W	1970-71 FACULTY ASSIGNED *5 B	W	1970-71 ADMINISTRATORS ASSIGNED B	W
VIGOR	W	Bi-racial	1385	930	36(6)	60(3)	1	2
WARREN	B	Closed						
WASHINGTON	B	Bi-racial	780	636	14	11(11)	2	
WESTLAWN	W	W		322	4(1)	7		1
WHISTLER	W	Bi-racial	160	227	6(1)	11		1
WHITLEY	B	Bi-racial	345	127	6	7(3)	1	
WILL		Bi-racial	160	652	7(2)	13		1
WILLIAMS	W	Bi-racial	41	533	8	11		1
WILLIAMSON	B	Bi-racial	570	594	18	25(2)	1	1
WILMER	W	Bi-racial	54	349	4	9		1
WOODCOCK	W	Bi-racial	97	145	5(2)	10½		1

*1 By Court order Bienville has become a part of the Vigor High School Complex, which has an assigned enrollment of 1385 black, 985 white.

*2 Calcedeaver is attended entirely by a community of persons of entirely mixed bloodlines and is therefore considered bi-racial.

*3 By Court order Carver has become a part of the Blount High School Complex, which has an assigned enrollment of 1233 black, 1041 white.

*4 As will be noted, this is a small one teacher school,isolated on an island in the Gulf of Mexico.

*5 The figures in parenthesis indicate the number of vacancies, by race, yet to be filled in order to reach the 60/40 ratio.

*6 Note that although there are five schools with all white student bodies, every school has a bi-racial faculty, except Dauphin Island School, a one teacher school on an island in the Gulf of Mexico.

In recent decisions the Courts have set out the various elements that must be taken into account in determining if a school system has been converted from a dual system to a unitary, nonracial system—faculty and staff; transportation; extra curricular activities, including sports; facilities; school construction, consolidation and site selection; transfer policy; and student body composition.*[2] The Petition For Writ of Certiorari, and now Petitioners' Brief upon the Writ, directly concern themselves only with student body composition. Nevertheless, since this is only one element of the total desegregation process, it is desirable that some attention also be directed toward an examination of all of the elements of the conversion from dual to unitary school system, as they exist in the Mobile County Public School System.

(1) Faculty and Staff

The School Board has conducted a positive and affirmative program to achieve complete desegregation of faculty. This has been accomplished in many instances by disregarding the Alabama Tenure Laws, as required by the Court; and regrettably, often at the expense of sound educational practice.

The extent of faculty integration has increased sharply each year since August, 1966 when the Court first instructed the School Board to begin faculty desegregation. During the 1967-68 school year, only fifteen teachers taught across racial lines. At the conclusion of the 1968-69 school year all but three of the then ninety-one schools of the system had integrated faculties.*[3]

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*[2] **Singleton v. Jackson Municipal Separate School District,** 419 F.2d 1211 (5th Circuit, en banc, December 1969); and **Ellis v. Board of Public Instruction of Orange County,** 423 F.2d 203. (5th Circuit, 1970)

*[3] Findings of Fact, October 13, 1967, paragraph 23; and Faculty Report to the District Court, December 3, 1968 respectively.

Throughout the 1969-70 school year every school in the system had an integrated faculty, and over 20% of the 2605 teachers in the system were teaching across racial lines in schools where the race of a majority of the student body was opposite their own. This includes both black teachers in predominantly white schools, as well as white teachers in predominantly black schools.*4

As a result of implementation of the judgments and orders of the District Court and the Court of Appeals now before this court for review, assignments of faculty for the 1970-71 school year have been made in a conscientious effort to achieve a 60% white, 40% black, faculty in every school, as required by the Court; 60/40 being the approximate ratio of white and black teachers employed in the system as a whole. The following statistical table reflects actual assignments as they now exist (as of September 15, 1970). The figure in parenthesis indicates the number of vacancies to be filled, by race. Further adjustments to reach the exact ratio set by the court are being made and will continue until the task is accomplished.

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*4 Findings of Fact, April 14, 1970, Attachment E . . . and . . . Report to the District Court dated November 26, 1969, filed at the direction of the Court. . . . Every school except Dauphin Island, a one teacher school on an island in the Gulf of Mexico, reopened by Court order on January 31, 1970.

NAME OF SCHOOL	1970-71 FACULTY ASSIGNED B	W
ADAMS (CLEVELAND)	16	25
AUSTIN	5	7
BAKER	14(3)	26
BIENVILLE *1		
BRAZIER	14	17(3)
BURROUGHS	6	9(1)
CALDWELL	6(½)	3½(6½)
CENTRAL	24	27(8)
CITRONELLE	19(2)	31
COUNCIL	6(1)	8
CRICHTON	7½	11(1)
DAVIDSON	37(8)	66(2)
DICKSON	9	14
DODGE	10	14
EANES	13(3)	23
EVANS	8	8
FONVILLE	13	9(11)
GLENDALE	10	14(2)
GRANT	16	9(15)
HALL	18	23(4)
HILLSDALE	12	17(1)
INDIAN SPRINGS	6	9
LEINKAUF	6	8

NAME OF SCHOOL	1970-71 FACULTY ASSIGNED B	W
ALBA	25(1)	38(1)
AZALEA ROAD	14(2)	24
BELSAW (MT. VERNON ELEMENTARY)	4	3(4)
BLOUNT	36	41(12)
BROOKLEY	7	10(1)
CALCEDEAVER	2	4½
CARVER *2		
CHICKASAW	6	8(2)
CLARK	23(1)	34(2)
CRAIGHEAD	11	16(1)
DAUPHIN ISLAND		1 *3
DAVIS	9(1)	16
DIXON	5	6(2)
DUNBAR	14	13(9)
EIGHT MILE	9(1)	15
FONDE	8	13
FOREST HILL	6	10
GRAND BAY	9(1)	15(1)
GRIGGS	11	17
HAMILTON	7	11
HOLLINGER'S ISLAND	5	7
LEE	10	16
LOTT	8	11

NAME OF SCHOOL	1970-71 FACULTY ASSIGNED B	W
MARYVALE	8	12
MOBILE COUNTY HIGH	13(1)	22
MONTGOMERY	10(6)	24
MOUNT VERNON	5	4½(3)
OLD SHELL	5	6(1)
OWENS	20	13(17)
PHILLIPS	18(1)	28
RAIN	23	35
ST. ELMO	8	11(2)
SATSUMA	17(3)	30(1)
SEMMES	13(2)	23
SHEPARD	4(2)	8
TANNER WILLIAMS	3(2)	7
THOMAS	3½	5
TRINITY GARDENS	15	17(6)
WASHINGTON	14	11(11)
WHISTLER	6(1)	11
WILL	7(2)	13
WILLIAMSON	18	25(2)
WOODCOCK	5(2)	10½
MERTZ	4	7
MOBILE COUNTY TRAINING	14	8(12)
MORNINGSIDE	8	11(1)
MURPHY	31(7)	58
ORCHARD	10	15
PALMER (SNUG HARBOR)	10	5(9)
PRICHARD	12(1)	19
ROBBINS	9(1)	12(2)
SARALAND	9	13
SCARBOROUGH	13	19(1)
SHAW	21(4)	38
STANTON ROAD	13	17(2)
THEODORE	25(6)	47
TOULMINVILLE	12	14(3)
VIGOR	36(6)	60(3)
WESTLAWN	4(1)	7
WHITLEY	6	7(3)
WILLIAMS	8	11
WILMER	4	9

*1 By Court order Bienville has become a part of the Vigor High School Complex, which has an assigned enrollment of 1385 black, 985 white.

*2 By Court order Carver has become a part of the Blount High School Complex, which has an assigned enrollment of 1233 black, 1041 white.

*3 As will be noted, this is a small one teacher school, isolated on an island in the Gulf of Mexico.

Your attention is directed to the statistical table on preceding pages of this brief (page 7) for a detailed presentation of the substantial number of black principals in charge of predominantly white faculties and white student bodies, and the substantial number of white principals in charge of predominantly black faculties and black student bodies.

(2) Transportation

Mobile is a combined city-county school system with many rural schools. Thus in the traditional manner of rural school systems, there are a substantial number of school busses operated by the School Board to transport students in the rural areas of the county to these rural schools. A few busses are also used to provide transportation for a small number of students residing in remote outlying areas within the city limits.

At one time, during the era of the dual school system, the Board did in fact operate a dual transportation system with overlapping bus routes, utilizing transportation to preserve the dual system. This is no longer the case. Schools in that part of the system where transportation is provided, serve specific geographic attendance zones drawn by the District Court, and approved by the Court of Appeals, sitting en banc, **Singleton v. Jackson**, 419 F. 2d 1211; every zone is bi-racial and every school is integrated. School busses are routed in such a manner as to transport all students in each attendance zone to the school serving the zone. These routes are drawn without regard to race; they do not overlap; each bus picks up and transports every student on its route regardless of the race of the student; students are not segregated within the busses; and the same quality and extent of service is provided in all areas of the county without reference to

the race of the students living in the area. The transportation system is thus operated on a non-segregated and non-discriminatory basis in every respect.*5 This is entirely conceded by Petitioner in its brief (page 6) where petitioner states: "Since September 1969, the rural portion of the system . . . (which is entirely dependent upon transportation) . . . has been desegregated adequately".

(3) Extra Curricular Activities, Including Sports

All extra curricular activities, including sports, over which the School Board has control are being operated on a non-segregated basis throughout the system, and have been for several years.*6

All athletic teams at every school are open to every student regardless of race. Participation by minority race students, particularly by black students at traditionally white schools, has been substantial. For example, during the 1969-70 school year several predominantly white high schools fielded bi-racial basketball teams with more black players than white. There is also cross-scheduling between traditionally black schools and traditionally white schools in all major sports, in regular season play, and all tournament and play-off competitions are conducted on an integrated basis with traditionally white and traditionally black schools in competition against each other.*7

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*5 Findings of Fact, April 14, 1970, pages 9-10, page 3 and Attachment A.

*6 Findings of Fact, October 13, 1967, paragraph 22 . . . and Findings of Fact, April 14, 1970, pages 14-15.

*7 Findings of Fact, April 14, 1970, pages 14-15.

The same situation pertains to all other extra curricular activities over which the School Board has control, such as bands and other musical groups, ROTC units, speech and other academically related competitions, clubs and organizations, school related social events, parent related activities such as Parent Teacher Associations, and spectator events.*8

(4) Services, Facilities and Programs

There is no separation of students within the individual schools by race, by sex (except for physical education and gender related courses such as home economics), by class, by tracts or on any basis, other than the normal division of students into grade level and courses of study, which divisions have no racial basis.*9

All facilities are made available to all schools in the system without regard to the present or past racial composition of the schools. Within each individual school of the system all facilities are made available to all students on an equal basis, regardless of race. This includes not only facilities in the strict sense such as restrooms, lunchrooms, classrooms, laboratories, gymnasiums, libraries, playing fields and the like; but also, all services, activities and programs such as bands, orchestras, choral groups, clubs, counseling services, student governments, honor societies, publications staffs, intramural sports, assemblies, class elections and honors, parties and social events; and every other facility, activity and program of every school. This has been the situation for several years.*10

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*8 Findings of Fact, April 14, 1970, page 15.

*9 Findings of Fact, April 14, 1970, page 16.

*10 Findings of Fact, October 13, 1967, paragraph 22 . . . and . . . Findings of Fact, April 14, 1970, pages 16-18.

All schools are treated equally without reference to the past or present racial composition of the school, with regard to the allocation of instructional materials, facilities, equipment, furnishings, supplies, textbooks, allocated funds and every other item provided to or for schools of the system; and courses of instruction are offered without regard to race. This also has been the situation for several years.*11

Not only are all facilities, services, activities, and programs available to every student without regard to race, and operated on a non-segregated, non-discriminatory basis, but actual participation by minority race students is substantial*12

(5) School Construction, Consolidation and Site Selection

The fault of the School Board is that for many years it followed the unusual practice of building schools where the children are. Now, the construction of or addition to any school, and the selection of any school site, must have the prior approval of the Court. This has been a part of the Mobile desegregation plan since 1968.

The School Board is genuinely perplexed and uncertain as to what shifting standard may next apply, or from time to time apply, with regard to school construction plans and programs. The Board has already suffered substantial financial loss as a consequence of land acquisition and other construction preparations made with District Court approval, later reversed and erased by the Court

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*11 Findings of Fact, October 13, 1967, paragraph 28 . . . and . . . Findings of Fact, April 14, 1970, page 17.

*12 Findings of Fact, April 14, 1970, pages 17-18 . . . and . . . Report to the Court, February 24, 1970.

of Appeals.*13 As a result the School Board's building program has been at a total standstill for three years. No schools have been constructed and no school sites selected during this time.

The last schools constructed in the system were Dodge and Adams in 1967 and Grand Bay in early 1968. Dodge and Adams opened their doors for the first time in September 1967, both as fully integrated schools. The current assigned enrollment at Dodge is 62 black and 670 white. The current assigned enrollment at Adams, which first opened its doors as a predominantly black school, is 293 black and 687 white. Grand Bay first opened in September 1968. The current assigned enrollment at Grand Bay is 152 black and 667 white.*14

Regarding school consolidation, there have been a number of consolidations, some proposed voluntarily by the School Board and some required by the District Court, within the past three years. Each has resulted in a significant increase in the extent of integration in the system. Some of the more significant consolidations are:*15

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*13 Orders of the District Court dated December 20, 1968 and March 14, 1969 approving the Board's construction plans for a new building at Howard Elementary School and an additional building at Toulminville High School were reversed by the Court of Appeals on June 3, 1969. As a result the School Board has suffered a financial loss of approximately a half million dollars (Brief of Appellees in Court of Appeals number 27,260 and 27,491, pages 6, 13 and 38, also from the transcript of testimony in those cases, Tr. pages 13-16, 29 and 124). Howard has now been abandoned because of its substandard facilities. Toulminville continues to operate with an assigned student body of 454 black and 247 white.

*14 Findings of Fact, April 14, 1970, page 19, and Attachment A, . . . and . . . Statistical table attached to the Court of Appeals opinion of August 4, 1970.

*15 Findings of Fact, April 14, 1970, pages 10-22. All figures are shown as of the time the consolidation occurred.

1. Closing of the all black Emerson Elementary school and distribution of its students to two adjacent schools, one of which had been traditionally black (Council) and one traditionally white (Leinkauf), producing an enrollment at Leinkauf of 224 white and 235 black.

2. Closing of the all black Robert Thompson School and consolidation of its students into the theretofore all white Wilmer School.

3. Closing of the all black Cottage Hill Elementary School and the distribution of its students to the theretofore all white Fonde, Shepard and Dodge Elementary Schools.

4. Consolidation of the all white Citronelle and all black Rosa Lott Schools, resulting in the following enrollments: Citronelle, 800 white and 400 black; Rosa Lott, 465 white and 145 black.

5. Conversion of the all white Augusta Evans School to a school for special students with an enrollment of 54 white and 87 black, and a faculty of 8 black and 8 white.

6. Closing of the traditionally white Arlington Elementary School and the distribution of its students to surrounding schools, some of which are predominantly white, and some of which are predominantly black.

7. Closing of the all black Warren Elementary School and the distribution of its students to the traditionally white Crichton Elementary School and other schools, predominantly black, producing an enrollment at Crichton of 457 white and 240 black.

8. Closing of the all black Barney School resulting in the distribution of its students to surrounding schools, some predominantly white and some predominantly black.

9. Consolidation of the all black Belsaw and the all white Mount Vernon schools, resulting in integration of both schools.

10. Consolidation of the all black St. Elmo and all white Theodore Schools, resulting in the following enrollments: St. Elmo 436 white, 54 black; Theodore 1466 white and 335 black.

11. Consolidation of the all black Burroughs, all black Dixon and all black Dawes Union Schools with the all white Griggs and all white Davis Schools resulting in:

(a) Closing of the all black Dawes Union School

(b) Integration of the other four schools producing the following enrollments:

Burroughs .....192 white, 290 black;
Griggs .....865 white, 41 black;
Davis .....591 white, 178 black;
Dixon .....249 white, 189 black.

12. Closing of the all black Howard School and the absorbtion of its students into Old Shell Road School, a traditionally white school.

As do most large school systems in cities undergoing large scale population shifts as a result of Federally sponsored urban development programs and other factors, the Mobile Public School System has found it necessary to resort to the use of portable classroom units that can be moved from one permanent school facility to another. Some schools have adequate basic facilities (land area, lunchroom, library, physical education, special facilities) to accommodate a number of portable classrooms; some do not. Within this basic limitation, the Board follows a policy of locating portable classrooms solely on the basis of and for the purpose of providing the facilities neces-

sary to accommodate the students assigned to the various schools by the terms of the various orders of the Court itself.*16

(6) Transfer Policy

The entire transfer policy now in use, including a majority to minority transfer provision, was formulated by the court itself. This policy is operated in accordance with provision prescribed by the court and is applied uniformly throughout the system.*17 The transfer policy is attached to this brief, as APPENDIX I.

(7) Bi-Racial Committee

The District Court, upon the suggestion of the Court of Appeals, has appointed a bi-racial committee to advise and assist the School Board and the Court in the operation of the Court ordered desegregation plan and the maintenance of a unitary school system. The committee, appointed by the District Court on August 12, 1970, has ten members, five black and five white. *18 The committee became active immediately and has begun to make its presence felt.

(8) Student Assignment

The total desegregation plan for the whole system, now in full implementation, assigns every student in the system to a school on the basis of a **unitary system of geographic attendance zones**, drawn by the District Court, the Court of Appeals, the U. S. Department of Justice, and the Office of Education of the Department of Health, Education and

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*16 Findings of Fact, April 14, 1970, page 22.

*17 Findings of Fact, April 14, 1970, page 23.

*18 At the request of Petitioner, the Court has now appointed four more members to the committee, two black and two white.

Welfare. In addition to this, in three instances, two adjacent elementary school zones have been paired; Council-Leinkauf, Palmer-Glendale and Hamilton-Robbins. This has produced the assigned enrollments for the 1970-71 school year set out in the statistical table in a previous section of this brief (page 7).

III. The Desegregation Process—Chronologically

At the outset of this litigation the Board of School Commissioners of Mobile County committed themselves to compliance with the constitutional mandate of the Fourteenth Amendment of the United States Constitution, as originally stated by this Honorable Court in **Brown v. Board of Education of Topeka**, 347 U.S. 483, that the opportunity for education is:

> "a right which must be made available to all on equal terms."

Full comprehension of the obligations of school systems with reference to the legal principles arising out of **Brown**, and the constitutional principles interpreted by **Brown**, has not always been easy for this School Board; as it has not been easy for school boards and courts throughout the nation. (Compare: **Brown**; **Briggs v. Elliott**, 132 F. Supp. 776, **United States v. Jefferson County Board of Education**, 372 F.2d 836, 380 F.2d 385, cert. denied 389 U.S. 840; **Green v. County School Board of New Kent County, Virginia**, 391 U.S. 430; **Alexander v. Holmes County Board of Education**, 396 U.S. 19; **Avery v. Wichita Falls Independent School District**, 241 F.2d 230; **Borders v. Rippy**, 247 F.2d 268; **Boson v. Rippy**, 285 F.2d 43; **Ellis v. Board of Public Instruction of Orange County**, 423 F.2d 203; **Kemp v. Beasley**, 423 F.2d 851 (C.A. 8th, 1970); **Deal v. Cincinnati**, 324 F.2d 209; and **Deal v. Cincinnati**, 419 F.2d 1387). Indeed, it has often been an impossible task for a school

board to determine not only what its current obligation may be, but to predict or anticipate what shifting standard may next apply.

It is against this background that school boards have had to proceed with the business of educating children on the one hand, while pursuing an illusive judicial phantom on the other; and the two have not always been totally compatible. For not being able to anticipate in advance or immediately adjust over-night to each new standard, for not being able to accomplish in fact, that which a court can accomplish on paper with a stroke of the pen, school boards throughout the country, this one included, have been labeled racist, lawless, uncooperative, contemptuous and recalcitrant. Realistic appraisal of the extent of integration in this school system, taken in the abstract or in comparison to the extent of integration in any and every other comparable school system in the nation, exposes the shallowness of such charges as sought to be applied to this school system.

In an earlier section of this brief (page 7) we have observed the progress of the desegregation process from a purely statistical standpoint. A chronological examination of the process from the judicial standpoint should now be helpful.

1962-1963

The Mobile County Public School System began the 1962-63 school year as a dual school system. Students were assigned to neighborhood schools on the basis of geographic attendance zones. The zones were drawn on a racial basis with overlapping zones for white and negro schools. The zones, both black and white, were drawn with strong reliance on sound educational principles, including: consideration for traffic and other safety hazards, distance, routes of travel and access, barriers such as rivers

and industrial complexes, and adherence to the basic neighborhood concept. Because of the dual zone aspect, this resulted in several split zones, (such as for the Warren School which is no longer in use, but was at that time all black), and the temporary transportation of some students in the city part of the system pending completion of construction of a school, (such as Hillsdale Heights School, built in the middle of a suburban black community to establish a dual zone in that area). *19

Suit was filed in March 1963 by a group of black parents and students seeking an injunction to require the School Board to begin desegregation of the school system.

1963-1964

As a result of action in the District Court and in the Court of Appeals the School Board was directed to begin the 1963-64 school year with desegregation of the system on a one grade a year stair-step plan.*20 The Board moved immediately to comply with the orders of the court, and did so in good faith throughout the 1963-64 school year.

1964-1965

On the basis of a motion for further relief, resulting in action in the District Court and the Court of Appeals, for the 1964-65 school year the Board was directed to speed up the stair-step desegregation plan by applying it to two grades per year rather than one and to abolish dual zones for each grade as it was reached in the stair-step progression.*21 Again, the School Board moved immediately to

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*19 The enrollment at Hillsdale is now 228 black, 493 white.

*20 **Davis v. Board of School Commissioners of Mobile County,** 318 F.2d 63; **Davis v. Board of School Commissioners of Mobile County,** 322 F.2d 356.

*21 **Davis v. Board of School Commissioners of Mobile County,** 333 F.2d 53.

comply with the order of the court, and did so in good faith throughout the 1964-65 school year.

At this point this School Board, as all others, was proceeding upon the understanding that its legal and constitutional obligation was defined by **Brown I**, supra, which stated that education is, "a right which must be made available to all on equal terms"; **Brown II** *22 which enunciated the doctrine of "all deliberate speed"; and subsequent cases construing **Brown I**, such as **Briggs v. Elliott**, supra, which stated, "It (Brown) has not decided that the states must mix persons of different races in the schools . . . The Constitution, in other words, does not require integration. It merely forbids discrimination"; and that the basic neighborhood school concept was not inconsistent with this obligation.

1965-1966

In response to the court's directive to do away with dual attendance zones the Board, in good faith, moved to comply, and undertook a redrawing of the zones. This effort did away entirely with dual zones and, while maintaining fidelity to the basic neighborhood school concept, produced a set of unitary zones. The 1965-66 school year began upon the basis of these unitary zones. The desegregation plan proposed by the board and approved by the court also contained, in deference to the strong feelings of both black and white citizens concerned with being caught in an inordinately difficult zone, a provision giving every student, black and white, the absolute right to attend the school of his zone or the nearest school formerly predominantly of his race, at his option. This was quite aptly named, the Option Plan.

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*22 **Brown v. Board of Education of Topeka**, 349 U.S. 294 (1955).

At this point this School Board, as most others, continued to seek in good faith to adjust itself in order to comply with its constitutional obligations, as they were defined and refined by the succession of cases following **Brown I and II**, supra, and **Briggs v. Elliott**, supra. Reference is had to the following cases, among others:

Avery v. Wichita Falls Independent School District, 241 F.2d 230, . . . "The Constitution as construed in the School Segregation Cases . . . forbids any state action requiring segregation of children in public schools solely on account of race; it does not however, require actual integration of the races."

Borders v. Rippy, 247 F.2d 268. . . . The equal protection and due process clauses of the fourteenth amendment do not affirmatively command integration, but they do forbid any state action requiring segregation on account of their race or color of children in the public schools."

Holland v. Board of Public Education, 258 F.2d 730. . . . The Fourteenth Amendment does not speak in positive terms to command integration, but negatively, to prohibit governmentally enforced segregation."

Boson v. Rippy, 285 F.2d 43,. . . . Negro children have no constitutional right to the attendance of white children with them in the public schools. Their constitutional right to 'the equal protection of the laws' is the right to stand equal before the laws of the State; that is, to be treated simply as individuals without regard to race or color."

1966-1967

On August 16, 1966, less than three weeks before the opening of school for the 1966-67 school year, the Court of Appeals reversed a decree of the District Court and required that the School Board's existing Option Plan be modified so as to provide for every student in the system

the blanket option of attending the school of his zone, or at his option the nearest black school **or the nearest white school.**[*23] Again, as in the past, the School Board moved immediately to amend the existing desegregation plan to incorporate this change required by the Court of Appeals, and implemented the same in good faith throughout the 1966-67 school year.

In addition, the Court of Appeals required the Board to: (1) add to its transfer policy the right to transfer in order to get a course of study not available at the school where a student is assigned; (2) speed up the stair-step application of the desegregation plan; (3) prepare to begin faculty desegregation.

The School Board also moved immediately to comply with these requirements. The stair-step application was immediately accelerated as specified; the subject matter transfer provision was immediately adopted, and remains a part of the transfer policy today; and preparations were made to commence faculty desegregation with the beginning of the next school year, including immediate initiation of inservice training of bi-racial teaching teams.

On its own, and without any suggestion or prompting from the court, the School Board began taking steps toward desegregation of its transportation system in the rural part of the school system, and desegregation of all services, facilities, programs, activities, and extra curricular activities, including sports.

1967-1968

In March, 1967, the United States Department of Justice was permitted by the District Court to intervene. In July, upon a motion for further relief, the District

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[*23] **Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896.**

Court held an exhaustive evidentiary hearing over a period of several weeks between July 18 and August 18.*24 On October 13, 1967 the District Court entered a decree, accompanied by full Findings Of Fact and Conclusions Of Law.

In this Findings of Fact the District Court found:

(1) That there was no evidence of discrimination by race in the administration of the desegregation plan.

(2) That all services, facilities, activities and programs of the school system are available to every student and to every school in the system, without reference to race, including: restrooms, lunchrooms, special facilities and equipment, athletic teams, bands and choral programs, clubs and student groups, counseling, honor societies, dances and other social activities.

(3) That the defendant had formulated a specific plan for faculty desegregation, had commenced faculty desegregation, and had made sufficient and proper effort in the prevailing circumstances.

(4) That all staff and staff activities are integrated.

(5) That the Board had instituted remedial programs for the benefit of black students in the system, receiving the commendation of the Office of Education of HEW.

(6) That the Board had voluntarily undertaken several school consolidations, resulting in the closing of all black schools and the consolidation of the black students into schools that were either all white or predominantly white.

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*24 It is perhaps pertinent to observe here that although the litigation commenced in 1963 this was only the third evidentiary hearing. Petitioner complains long and loud in its brief over the lack of evidentiary hearings, and yet these complaints are all **after the fact**. The inescapable conclusion is that Petitioner is not so much concerned with **having** an evidentiary hearing as it is for being in position to complain over lack of such a hearing.

(7) That the Board was following a policy of constructing, renovating and maintaining schools without regard to race.

(8) That furnishings, fixtures, equipment, facilities, textbooks, supplies, allocated funds and courses of study are allotted to all schools without regard to race.

(9) That no complaint had been made to the Court by anyone as to discriminatory action of the board in administration of the desegregation plan.

There has been no subsequent finding to the contrary on any of these points.

In the meantime the 1967-68 school year commenced and the School Board, in good faith, implemented the desegregation plan prescribed by the courts, including several modifications prescribed by the district court as a result of the exhaustive evidentiary hearing.

1968-1969

On March 12, 1968 the Court of Appeals, relying heavily on the previous opinion of the court, en banc, in **United States v. Jefferson County Board of Education**, 372 F.2d 836 and 380 F.2d 385, entered an opinion in which it required the School Board to redraw its attendance zones in the urban or city portion of the system, saying:

> "The percentage of total students in bi-racial schools is superficially acceptable, but beneath the surface the picture is not good. . . . Having found the results of the present plan unsatisfactory, we turn to the difficult question of what should be done. . . . In this case, it will be necessary for the board to do the job again, this time making a survey of the type suggested by appellants. On the basis of information obtained from the survey, school officials will draw

attendance-zone lines on what they conceive to be a **nonracial basis.**"*25 (emphasis supplied)

In addition, the Court of Appeals also required: (1) elimination of the Option provisions of the plan; (2) further steps with regard to elimination of faculty; (3) a survey of the system and certain reports to the court; (4) the cross-scheduling of formerly white and formerly black schools in athletic competition; (5) certain restrictions on construction; (6) for the rural portion of the system, either a redrawing of zone lines, or the use of a freedom of choice plan of the type outlined in **Jefferson, supra.**

The Court of Appeals actually prescribed a specific decree for entry by the district court. It began by stating:

"As stated in the opinion of the Court of Appeals, the primary concern is that attendance-zone lines be drawn on a **nonracial** basis." (emphasis supplied) (*id.* at 696)

This decree was entered verbatim by the District Court on May 13, 1968. Once again, in good faith, the School Board moved promptly to carry out the directions of the court. The survey was made and filed with the court. The student assignment problem was carefully restudied and attendance zones were redrawn. The redrawn zones were filed with the court on May 7, 1968 even before the District Court had proceeded to enter the decree specified by the Court of Appeals. Two months later, in the face of mounting public hostility and pressure over dissatisfaction with the redrawn zones, the School Board asked the court to consider the possibility of placing the entire school system on a freedom of choice plan of student assignment.

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*25 **Davis v. Board of School Commissioners of Mobile County,** 393 F.2d 690 (693).

Commencing on July 17, 1968 the court held another full (6 days) evidentiary hearing, the second in as many years. During the course of the hearing both the Justice Department and the Petitioners presented to the court their own separate set of proposed zone lines for the urban portion of the system. As commented upon by the District Court in its decree, both of these plans provided for the continued existence of some all white and some all black schools.*[26]

Ultimately, the District Court rejected all three proposed zone plans (Board, Petitioner and Justice Department). It then entered a decree calling for the following plan of student assignment:

(1) In the **rural** part of the system—freedom of choice, as specifically provided by the Court of Appeals, and as specifically requested by the Justice Department.*[27]

(2) In the **urban** part of the system—freedom of choice in the high schools, and attendance zones for elementary junior high school, with the zones drawn by the court itself.

Referring to **Green v. County School Board of New Kent County, Virginia,** 391 U.S. 430, the court provided that the freedom of choice portion of its plan would operate only on an interim basis, to be continued, or not, from year to year dependent upon the speed of desegregation accomplished.*[28] This decree also provided for the closing of two all black schools and one all white school.

Once again, the School Board moved promptly to implement the Decree of the Court, and continued to imple-

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*[26] Decree of the District Court, July 29, 1968 (page 3).

*[27] Motion of the Justice Department filed on July 31, 1968, referred to by the Court in its Order of August 2, 1968 (page 4).

*[28] Decree of the District Court, July 29, 1968 (page 8).

ment the same in good faith throughout the 1968-69 school year. In the meantime, an appeal was taken.

During the course of the year the School Board also sought permission of the District Court to build a new elementary school building to replace a substandard building at the Howard Elementary School, and to add an additional building at Toulminville High School. After an evidentiary hearing permission was granted by the District Court. Subsequently on appeal the Court of Appeals reversed, concluding that the buildings would tend to perpetuate the dual system. Howard has now been abandoned; the assigned enrollment at Toulminville is 453 black, 247 white.

1969-1970

On June 3, 1969, on the appeal of the District Court order, the Court of Appeals switched horses in the middle of the stream and again reversed the District Court. Reversal was on the theory that the zone lines drawn by the district court should have been drawn on a **racial basis** rather than a **non-racial basis** as most recently ordered by the Court of Appeals, and that the statistical extent of desegregation in that portion of the system under freedom of choice was unacceptable, in view of **Green v. County School Board of New Kent County, Virginia**, supra.*[29]

The Court of Appeals remanded to the District Court and directed the court to request the Office of Education to collaborate with the School Board in the preparation of a revised plan of student assignment, providing: (1) that HEW and the Board should try to agree upon a revised plan; (2) that if HEW and the Board could not agree, HEW should file its own recommendations for a plan, (3) that all parties could then file objections and suggested

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*[29] **Davis v. Board of School Commissioners of Mobile County**, 414 F.2d 609.

amendments to the HEW recommendations; (4) that for plans as to which objections are made or amendments suggested or which in any event the district court will not approve without a hearing, the District Court should have a hearing, within ten days (5) that a new plan for the 1969-70 school year shall be approved by the District Court no later than August 1, 1969.

Pursuant to the June 3, 1969 opinion and mandate of the Court of Appeals, on June 4 the District Court contacted HEW and requested their attention. HEW did not respond until June 11, and it was not until June 16, after thirteen (13) of the allotted thirty (30) days had elapsed, that the professional staff of the school system was able to establish a working relationship with HEW.*30

Although a great deal of work was done and every effort was made, no plan could be agreed upon by the School Board and HEW within the remaining allotted time, seventeen (17) days. In accordance with the decree, HEW filed its own recommendations with the District Court on July 10.

On July 21, 1969, the School Board filed extensive objections to the HEW proposal pointing out in some detail why various portions of the HEW recommendations are educationally unsound and incapable of effective administration. At the same time, as also provided by the decree, the School Board filed its recommended alternatives. When it became apparent that the District Court did not intend to have a hearing, the School Board supported its objections and alternative recommendations by affidavit testimony filed in the District Court on July 29, 1969.*31

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*30 Affidavit testimony of James A. McPherson, filed in the District Court on July 29, 1969 (pages 4 & 5).

*31 The affidavit of James A. McPherson, referred to in footnote 30, filed in the District Court on July 29, 1969.

Although the Court of Appeals decree had invited them to do so, Petitioners and the Justice Department chose not to submit alternative recommendations of their own to the court; **and neither of them requested the district court to hold an evidentiary hearing.**

On August 1, 1969, the District Court, consistent with the mandate of the Court of Appeals, entered its order approving a plan for operation of the school system for the 1969-70 school year. In formulating this order the District Court, using its own knowledge of the school system and current circumstances as it had done on a previous occasion, put together its own desegregation plan. In doing so, it rejected almost entirely the alternatives recommended by the School Board, and rejected in part and accepted in part the recommendations of HEW.

This desegregation plan formulated by the District Court itself, did essentially the following things:

(a) It required and accomplished integration of faculty in every school of the system.

(b) For all but nine (9) of the then eighty nine (89) schools of the system it established revised unitary attendance zones, drawn on a basis taking race into account along with other factors in order to maximize integration. (Resulting in the assignment of approximately 70,000 of the systems then 73,500 students to bi-racial schools).*32

(c) It required the School Board, again working with HEW, to undertake further study and effort toward the development of a still further modification of the desegregation plan with reference to those schools east of Inter-

*32 Although some 70,000 were assigned to bi-racial schools, only 55,314 enrolled and attended. The others moved their place of residence, entered private school, dropped out of school, or in some other manner, beyond the Board's control, avoided their bi-racial assignment.

state Highway 65, where the excepted nine (9) are located; and to submit the suggested modifications to the court by December 1, 1969, for implementation in September 1970.

The School Board moved immediately to comply with this Order of the Court, as it had done with all previous orders, and began implementation of the order, in good faith, with the opening of school for the 1969-70 school year. Good faith implementation was continued throughout the school year, until of course, the plan was subsequently changed by the court in the midst of the school year.

In the meantime an appeal was taken by Petitioner from the District Court order of August 1. The Justice Department did not appeal. On the appeal the Petitioner took the position that the plan devised by the District Court was satisfactory as it applied to the **rural** portion of the system, satisfactory as to the **urban** portion of the system **west** of Interstate Highway 65, and unsatisfactory **only** as to the aspect of student assignment for that portion of the system **east** of Interstate Highway 65.*33 The Justice Department took the position that the Order of the District Court was satisfactory in every respect, stating in its brief to the Court of Appeals:*34

> "Under the circumstances of this case, we believe the August 1 Order is consistent with this Court's June 3, 1969 decision in this case."

In the Court of Appeals the case was consolidated with others and heard by the court sitting en banc. The Court of Appeals reversed the District Court in all of the other

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*33 Brief of Petitioner (Appellant there) in the Court of Appeals on August 12, 1969 (pages 5-6).

*34 Brief of the Justice Department in the Court of Appeals on August 22, 1969 (page 5).

consolidated cases and sustained the District Court in this case.*35 Upon certiorari to this court, the Court of Appeals was reversed, and the case remanded for further proceedings consistent with **Alexander v. Holmes County Board of Education**, 396 U.S. 19.*36

In the meantime the professional staff of the school system had restudied the area east of Interstate Highway 65, as instructed by the District Court in its Decree of August 1, 1969, and filed its recommendations in the District Court on December 1, 1969. HEW disregarded the District Court directive to work with the School Board, and filed hastily prepared recommendations (three alternative recommendations) in the District Court, also on December 1, 1969.*37

Upon remand from the Supreme Court, the Court of Appeals directed all counsel to propose to the court an expeditious manner of proceeding with the case. The School Board responded, and among other things suggested **immediate remand to the District Court for an evidentiary hearing**, with directions to the court to have the **hearing** and enter its order not later than January 26, 1970, so as to enable the Board to begin implementation immediately upon commencement of the second semester of the school year.*38 The Justice Department and Petitioner both responded, but did not suggest an evidenti-

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*35 **Singleton v. Jackson Municipal Separate School District**, 419 F.2d 1211.

*36 **Carter v. West Feliciana Parish School Board**, 396 U.S. 29 (1970).

*37 The HEW recommendations are discussed in full in a later section of this brief, at pages 60 et seq.

*38 Counsel's letter to the Judges of the Court of Appeals dated January 17, 1970, with proposed decree attached.

ary hearing, although Petitioner loudly complains now for lack of a hearing.*39

On January 21, 1970 the case was sent by the Court of Appeals back to the District Court, **without** directions for an evidentiary hearing, although such had been requested by the School Board.

The next day, January 22, 1970, the District Court held a conference of all attorneys at the conclusion of which the court asked the School Board to submit to the Court any modifications that it cared to suggest in its previously submitted plan of December 1, 1969 and asked the Justice Department to submit any suggestion it might have for modification of the HEW December 1 submission; noting that as they stood, neither of these plans were acceptable to the court.*40

The Justice Department hastily prepared some revisions of the HEW recommendations. This work was exhibited to the District Court at a second conference with the Court on January 27, 1970. At that time however, the essential part of the work, the maps setting out the proposed attendance zones, were not complete. Copies were not given to the court, nor to counsel and nothing was filed of record with the Clerk of the Court.*41

Contrary to what is stated in Petitioner's brief (page 19) where it is said . . . "The School Board failed to

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*39 Memorandum of the Justice Department filed in the Court of Appeals on January 17, 1970 and proposed decree filed by the Petitioner in the Court of Appeals (undated) in January 1970.

*40 Both dealing **only** with that part of the urban portion of the system **east** of Interstate Highway 65.

*41 Notwithstanding an order of the District Court dated January 28, 1970 noting that the Government submitted a revised plan at 9 a.m. on Tuesday, January 27, perusal of the court file and the docket entries make it clear that nothing was filed of record. Nor were copies furnished counsel.

respond to the Court's request." . . . on January 30, 1970 the School Board filed a five (5) page response in which it suggested several very minor modifications, and pointed out the following things:*42

> "2. These recommendations were developed over a period of approximately three months. They reflect the expert thinking and best judgment of competent, trained, professional educators who are thoroughly and intimately familiar with the school system. The desegregation plan embodied in these recommendations was soundly conceived and carefully fashioned in order to comply with all legal requirements imposed by the Court; and at the same time to do so in a manner that will be educationally sound, will cause the least possible hardship to the least number of students, parents and teachers, and will present the least possible danger of destruction of or substantial harm to the school system. If there were other recommendations that would accomplish all of these things better and more fully they would have been included as a part of the December 1 recommendations to begin with; but there are none.
>
> 3. It should be pointed out that what the Court has now done is to order the Board to attempt to have its professional staff to hastily, in a matter of several days, alter and revise the end product of this three months of extensive, careful, analytical work. Such a hasty effort cannot be expected to produce competent results. If we were merely dealing with maps and figures on a piece of paper this would present no problem; but we are not, we are dealing with human beings, children, and the very life of a public school system. The professional staff people indicate

*42 RESPONSE TO ORDER filed by the Board in the District Court on January 30, 1970.

that what the Court has suggested calls upon them to violate and sacrifice professional standards and principals that they, as professional educators, hold inviolate, and this they cannot do."

Facing a mandate to enter an Order before February 1, and finding the HEW recommendations, the School Board recommendations and the Justice Department revisions all not to its liking, and there being insufficient time for an evidentiary hearing, the District Court once again drew upon its own knowledge and prepared a new set of attendance zone lines for the schools concerned, ie, those in that part of the urban portion of the system lying east of Interstate Highway 65. The court, on January 31, 1970, entered its Decree setting out these zone lines for implementation as soon as practicable. This Decree also added to the existing desegregation plan, a majority to minority transfer provision.

Although the School Board was confronted with a major upheaval and the task of rearranging a large part of the school system during the middle of a school term, necessitating the displacement and reassignment of some 15,000 students, they set about the task in good faith.*43 On March 20, 1970 full implementation was completed. On April 14, in response to directions from the Court of Appeals, the District Court made supplemental findings of fact in support of its January 31, 1970 decree.

In the meantime, appeals were filed by Petitioner and the Justice Department, and a cross-appeal by the School Board. As these were pending the 1969-70 school year ended in virtual chaos, with boycotts by white and black students and parents objecting to forced reassignment, massive absenteeism, racial disorders in a number of

*43 Refer to the School Board's REPORT TO THE COURT dated February 23 and filed in the District Court on February 24, 1970.

schools necessitating use of the police riot squads, large scale residential relocation, an upsurge of school vandalism, defiance of school authorities, the court and law enforcement officials by parents and students, and large scale disruption of the normal educational process in general. Essentially, the school year ended on January 31 for a large part of the school system, because the education process simply came to a halt.

1970-1971

On June 8, 1970 the Court of Appeals, on the pending appeal, entered an opinion and judgment setting out a new plan of student assignment for that part of the urban portion of the school system lying **east** of Interstate Highway 65.*[44] As its judgment the Court adopted in toto the Justice Department revised plan exhibited to the court, but never formally filed of record, in the January 27, 1970 conference. This material, maps and accompanying statistical tables, was furnished to the Court of Appeals, ex parte, by attorneys for the Department of Justice. It was not a part of the record designated by any of the parties for the Court of Appeals. It represented not the work of an educator or school administrator, but of a Justice Department Attorney and a young female statistical clerk, over a period of four days. It came to the Court unauthenticated, and unsupported by testimony of any sort. This perhaps explains the obvious mistakes referred to in footnote 44.

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*[44] **Davis v. Board of School Commissioners of Mobile County**, 422 F.2d 1139 (1970). For no apparent reason, and we think inadvertenly without realizing it, the Court of Appeals also changed a number of zone lines in the WESTERN part of the urban portion of the system which had no effect whatsoever from the standpoint of desegregation, but very badly overcrowded some schools and left others under utilized. These mistakes were subsequently corrected by the District Court in its Orders of July 13 and 30, 1970.

The School Board strongly protested the exparte handling of so serious a matter, and with good reason.*45

Nevertheless, on June 12, 1970, the District Court entered its order requiring the School Board to implement the new plan set out by the Court of Appeals. Promptly, and in good faith, the Board and its professional staff set about the difficult task of compliance; beginning a program to educate the public to the substantial changes required by the court; and formulating the necessary steps to be taken within the school system, including the conversion of three high schools to junior high schools.

Then, on July 13, 1970 without notice to the School Board nor an evidentiary hearing, the District Court entered another order which, in essence, set out a still further and different plan of student assignment for the area concerned, ie, the schools in the eastern part of the urban portion of the system.*46 Once again, for the second time in five weeks, the School Board began the task

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*45 See:

(1) Objection To A Portion Of The Record, filed by the School Board in the District Court on March 28, 1970.

(2) Objection To Attempt To Informally Place Unauthenticated Documentary Material Into The Record In The Court of Appeals and Motion To Strike And Expunge, filed in the Court of Appeals by the School Board on March 28, 1970.

(3) Petition For Rehearing, filed in the Court of Appeals on June 24, 1970 (mistakenly dated May 23, 1970).

*46 The School Board nor its counsel have knowledge of why the District Court took this action. We assume, that the District Court, faced with the task of overseeing and enforcing the operation of a desegregation plan that was simply impossible of effective implementation (due to the lack of knowledge, and expertise of its authors, its gross statistical inaccuracy and other purely functional impossibilities) concluded that someone had to do something other than sit by and watch the school system blow apart. We had pointed out a number of these problems in our Petition for Rehearing, a copy of which had been mailed to the District Court at the time of filing.

of preparing the public and the school system for an entirely new desegregation plan.

Petitioner took an Appeal from the Order of July 13, and sought an injunction staying the order of the District Court. The School Board filed a Response in which it noted that it was in the unusual position of defending a District Court Order that it had not sought, and one with which it could only partially agree.*47 We then pointed out to the Court of Appeals a comparative analysis of the two plans which indicated clearly that the District Court approach not only avoided many of the functional impossibilities and points of educational unsoundness (with which we were most seriously concerned) but also actually **increased** the extent of integration as well.

On August 4, 1970, the Court of Appeals denied the Motion to Stay and entered an opinion sustaining the District Court.

In the meantime, on July 30, the District Court, without notice to anyone, had entered a further order, modifying thirty-two (32) of the attendance zones established just seventeen (17) days earlier by its Order of July 13.*48

Again, for the third time in less than two months, the School Board was faced with the task of making a sub-

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*47 Response to Motion, filed in the Court of Appeals on July 28, 1970.

*48 On this occasion the School Board had knowledge that the District Court contemplated some modification of its zones, to remove the mistakes (referred to in footnote 44) in several zones in the western part of the urban portion of the system, which had not been cured by its Order of July 13. To this end, the School Board, **when called upon to do so,** responded and advised the District Court, of the nature and location of these mistakes. Our mistake (the mistake of counsel; which we freely admit) was that in responding to the request of the District Court for information, we did not reduce our response to writing and send copies to opposing counsel.

stantial rearrangement of the school system. With the opening of school five weeks away, the Board moved promptly, if a bit frantically, to prepare the public and the school system for implementation of this new order.

On August 17, Petitioner, after delaying eighteen (18) days, appealed and moved the Court of Appeals for summary reversal. This appeal and motion were **not timely** inasmuch as the Court of Appeals had previously suspended the Federal Rules of Appellate Procedure for this and every other school case in the circuit, to require the filing of all appeals within fifteen (15) days.*[49] This point was raised by this counsel and by counsel for the Mobile County Council Parent-Teacher Associations, an intervening party.*[50]

Nevertheless, the Court of Appeals entertained the appeal and the motion and on Friday, August 21, notified this counsel of a conference in the Chambers of Judge Griffin Bell, one of the Judges of the Court, the following Monday, August 24. This conference was most irregular in that the Court did not notify counsel for the County Council, PTA, of the conference or invite their attendance, as a consequence of which they were not present.*[51]

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*[49] **Singleton v. Jackson Municipal Separate School District**, 419 F.2d 1211.

*[50] Petition For Rehearing and For Stay, filed by the intervenor, Mobile County Council PTA, on September 4, 1970; denied on September 18, 1970.

*[51] The Court did entertain and permit the presence of an incidental party defendant to the litigation, one David Jacobs, a black militant who has twice been arrested and convicted in connection with activities in leading disruptions at two schools in the system (once in the Prichard, Alabama Police Court and once in the Mobile Police Court) and who on May 16, 1969 was **enjoined** by the District Court from obstructing and preventing the attendance of students and faculty members by **intimidation** and other activities. Mr. Jacobs accompanied Petitioners counsel to this conference. We were not advised by the court of the reason for his presence.

Following this conference, on August 28, with the opening of school eleven days away, the Court of Appeals entered an opinion "terminating" the appeal in which it partially granted and partially denied the Motion For Summary Reversal; and in addition, required certain further rearrangement of several attendance zones, not involved in the appeal.

Once again, for the fourth time in less than three months, and with the opening of school eleven (11) days away, the Board turned in good but weary faith to the task of a substantial rearrangement of the school system.

On September 9, 1970 the 1970-71 school year commenced amid the chaos of a plan of student assignment pierced together at various times by the District Court, HEW, a Justice Department attorney, the Court of Appeals, a young lady statistical clerk and finally Judge Griffin Bell. In essence, this school year opened as the past year had closed; boycotts by white and black students and parents objecting to forced assignments, massive absenteeism (first day enrollment 62,094, down approximately 11,400 from the end of school last year), defiance of school authorities, racial disorders and physical violence in several of the schools (necessitating use of the police riot squad, and at one high school the daily attendance of approximately 80 uniformed officers) numerous arrests of students, and large scale disruption of the normal educational process.

In the meantime the Petition for certiorari has been granted and the Opinion and Judgment of the Court of Appeals (actually three opinions, June 8, August 4 and August 28) are before this Court for review.

IV. Summary

The school system has been fully and affirmatively desegregated in every respect, except, it may be contended, student assignment. With regard to student assignment, the **rural** part of the system and the urban or city part of the system **west** of Interstate Highway 65 have been fully and affirmatively desegregated as a result of the implementation in September, 1969 of the plan of student assignment devised by the District Court, approved by the Court of Appeals, en banc (**Singleton v. Jackson,** 419 F.2d 1211) and reviewed by this court on certiorari (**Carter v. West Feliciana Parish School Board,** 396 U.S. 290, per currium, 1970). The method of student assignment used in each of these areas is unitary attendance zones drawn by the court itself.

Thus we can define the essential point at issue as relating only to the element of student assignment for that part of the urban or city portion of the system located **east** of Interstate Highway 65.

On June 8, 1970, the Court of Appeals, on the appeal from the District Court order of January 31, 1970, entered the first of the three combined opinions now before this court for review. This opinion and judgment concerned primarily student assignment for these schools **east** of Interstate Highway 65 and set out a complete and specific plan of student assignment for these schools. This plan set out by the Court of Appeals is one that had been submitted to the Court by the United States Department of Justice, which had in turn prepared the plan by modifying a plan originally devised by the Office of Education of the Department of Health, Education and Welfare. As with the remainder of the system, the method of student assignment used by this plan is unitary zones. This plan also

closed some schools, consolidated others, paired others, recast the grade structure of others and completely redesigned all of the attendance zones east of Interstate Highway 65. Under this plan, all of the forty-one schools affected by the order lying east of Interstate Highway 65 became thoroughly bi-racial in student body composition, except eight elementary schools.*52

The subsequent order of the District Court on July 13 eliminated two more of the remaining all black schools, one by closing, and one by redesigning attendance zones, leaving only six.*53 Thereafter, the Court of Appeals in its order of August 4, 1970 (the second of the three orders now on review) eliminated yet another all black school by assigning, through pairing, 129 white students to theretofore all black Robbins Elementary School.

At that point, the five schools remaining all black, as classified by the court, were:

Name	White	Black
Owens	2	1300
Fonville	37	787
Stanton Road	5	826
Brazier	0	1120
Grant	30	850

All of these schools are located more or less in the middle of fairly densely populated residential areas that

*52 A statistical table of the number of black and white students assigned to each school by this plan was included by the Court of Appeals in its Opinion, which is a part of the printed Appendix.

*53 The Court of Appeals in its August 4, Opinion said seven, counting Council with 40 white and 427 black students as all black. A copy of the statistical table filed in the record by the District Court in connection with its July 13 Order, is attached to this brief as APPENDIX II.

have, for the most part since the inception of this litigation, become either all black or very predominantly black in character. Two, Owens in the City of Mobile and Grant in the City of Prichard, are in areas that are totally urban and most of the housing is in the form of Federally funded urban renewal projects, subject to the Federal Open Housing Laws. The other three, Fonville, Stanton Road and Brazier, are located in areas of a suburban nature. Two of these areas, Fonville and Stanton Road, were, at the beginning of this litigation, all white in character but have now become very predominantly black. The racial make up of all five of these zones and schools results entirely from voluntary residential patterns, and is thus the result of a pure *defacto* situation, rather than any practice of maintaining segregated schools by law, by design or by any other device (see **Deal v. Cincinnati Board of Education**, 419 F. 2d 1387).

On August 28, in the final of the three orders being reviewed, the Court of Appeals further increased the statistical extent of integration by redesigning two elementary school zones and by pairing four more elementary schools.

With the opening of the 1970-71 school year on September 9, 1970, the plan of student assignment placed into operation, as ordered by the court, produced the following assignment of students and faculty for the area concerned, the schools **east** of Interstate Highway 65.

NAME OF SCHOOL	RACIAL CHARACTER OF SCHOOL IN DUAL SYSTEM ERA	CURRENT (1970-71) RACIAL CHARACTER OF STUDENT BODY	1970-71 STUDENTS ASSIGNED B	1970-71 STUDENTS ASSIGNED W	1970-71 FACULTY ASSIGNED*3 B	1970-71 FACULTY ASSIGNED*3 W
BIENVILLE	W	Bi-racial*1				
BLOUNT	B	Bi-racial	1233	1041	36	41 (12)
BRAZIER		B	1006		14	17 (3)
BROOKLEY	W	Bi-racial	71	490	7	10 (1)
CALDWELL	B	Bi-racial	307	11	6(½)	3½(6½)
CARVER	B	Bi-racial*2				
CENTRAL	B	Bi-racial	1563	231	24	27(8)
CHICKASAW	W	Bi-racial	75	448	6	8(2)
CLARK	W	Bi-racial	903	687	23(1)	34(2)
COUNCIL	B	Bi-racial	404	50	6(1)	8
CRAIGHEAD	W	Bi-racial	516	242	11	16(1)
CRICHTON	W	Bi-racial	144	352	7½	11(1)
DUNBAR	B	Bi-racial	940	86	14	13(9)
EANES	W	Bi-racial	181	823	13(3)	23
EVANS	W	Bi-racial	118	91	8	8
FONVILLE	B	Bi-racial	866	15	13	9(11)
GLENDALE	W	Bi-racial	574	257	10	14(2)
GRANT	B	Bi-racial	1077	7	16	9(15)
HALL	B	Bi-racial	852	190	18	23(4)
HAMILTON	W	Bi-racial	204	414	7	11
LEINKAUF	W	Bi-racial	252	194	6	8
MARYVALE	W	Bi-racial	207	395	8	12
MERTZ	W	W		373	4	7
MOBILE COUNTY TRAINING	B	Bi-racial	699	202	14	8(12)
MORNINGSIDE	W	W		674	8	11(1)
MURPHY	W	Bi-racial	1546	1054	31(7)	58
OLD SHELL	W	Bi-racial	357	117	5	6(1)

NAME OF SCHOOL	RACIAL CHARACTER OF SCHOOL IN DUAL SYSTEM ERA	CURRENT (1970-71) RACIAL CHARACTER OF STUDENT BODY	1970-71 STUDENTS ASSIGNED B	W	1970-71 FACULTY ASSIGNED B	*3 W
OWENS	B	B	1479		20	13 (17)
PALMER (SNUG HARBOR)	W	Bi-racial	493	104	10	5 (9)
PHILLIPS	W	Bi-racial	820	364	18 (1)	28
PRICHARD	W	Bi-racial	566	187	12 (1)	19
RAIN	W	Bi-racial	111	1155	23	35
ROBBINS		Bi-racial	702	129	9 (1)	12 (2)
STANTON ROAD	B	Bi-racial	894	4	13	17 (2)
TOULMINVILLE	W	Bi-racial	454	247	12	14 (3)
TRINITY GARDENS	B	Bi-racial	969	171	15	17 (6)
VIGOR	W	Bi-racial	1385	990	36 (6)	60 (3)
WASHINGTON	B	Bi-racial	780	636	14	11 (11)
WESTLAWN	W	W		322	4 (1)	7
WHITLEY	B	Bi-racial	345	127	6	7 (3)
WILLIAMS	W	Bi-racial	41	533	8	11
WILLIAMSON	B	Bi-racial	570	594	18	25 (2)
WOODCOCK	W	Bi-racial	97	145	5 (2)	10½

*1 By Court order Bienville has become a part of the Vigor High School Complex, which has an assigned enrollment of 1385 black, 985 white.

*2 By Court order Carver has become a part of the Blount High School Complex, which has an assigned enrollment of 1233 black, 1041 white.

*3 The figures in parenthesis indicate the number of vacancies, by race, yet to be filled in order to reach the 60/40 ratio.

We would redirect your attention to the statistical table set out in an earlier section of this brief (page 7) for a view of the assignment of students for the whole system produced by the total desegregation plan placed in full implementation with the opening of school on September 9, 1970.

V. Petitioners' Contentions

Over the past eight years all of the **normal** techniques of desegregation ever devised — — the option plan, unitary zones, freedom of choice, majority to minority transfers, zones drawn on a non-racial basis, zones drawn on a racial basis, alteration of grade structure, enlargement of zones, reduction of zones, consolidations, closings, pairing of adjacent schools — — have been imposed upon the Mobile County Public School System. Some of these techniques are educationally sound some of them not.

From the standpoint of education the results are totally ungratifying. From the standpoint of desegregation, it is now abundantly clear that this school system is desegregated to the maximum extent that can be produced by **normal** techniques and any further rearrangement of the school system by such abnormal devices as massive bussing, cross-bussing, now-contiguous pairing, or any other arbitrary manipulation of students, can only be the pursuit of an arbitrary and artificial racial balance. And this is exactly what Petitioner now seeks.

As we understand the thrust of Petitioners contention, it is that despite the fact that total desegregation has been achieved, and despite the fact that this is a unitary school system, further abnormal devices in pursuit of a racial balance are justified, because:

(a) The District Court has not had evidentiary hearings;

(b) there have been exparte proceedings with the Court;

(c) the School Board has used certain techniques such as bussing black children, changing grade structure, portable classrooms, building and closing schools and manipulation of attendance zones, to maintain segregation.

We would rejoin these contentions briefly.

(a) **Evidentiary Hearings**

The District Court held exhaustive evidentiary hearings in 1963, 1965, 1967 and 1968. If anyone has been handicapped for lack of an evidentiary hearing since the July 1968 hearing, it has been the School Board, not petitioner. Without giving the Board the opportunity to offer proof of the soundness of the several proposed plans of student assignment it has filed in the district court since July 1968, the court has on each occasion rejected the Board's proposals entirely, in favor of plans devised by HEW, the Department of Justice and the Court itself, which have not had to stand the test of an open hearing. When this case was remanded by this Court in January 1970, (**Carter v. West Feliciana Parish School Board**, supra) the School Board, not Petitioner, urged that there be an evidentiary hearing and was ignored.*54 As we have pointed out in an earlier section of this brief (pages 24, 33-34) petitioner's complaints are all **after the fact** and it is obvious that Petitioner is not so much interested in having evidentiary hearings, as it is in complaining for lack of such hearings.

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*54 See:

(1) Letter of this Counsel to the Court of Appeals, dated January 17, 1970 and proposed decree attached.

(2) Memorandum of the Justice Department filed in the Court of Appeals, January 17, 1970.

(3) Proposed decree filed by Petitioner in the Court of Appeals (undated) in January, 1970.

(b) **Exparte Proceedings**

Certainly there have been exparte proceedings, **by counsel for all of the parties.** In an earlier part of this brief (page 39) we freely admitted the mistake of this counsel in responding to the District Judge's oral **request** for information, without reducing our response to writing and sending copies to the other parties. No later than Wednesday, September 23, 1970, while this brief was in preparation we had another exparte request for information from one Jerris Leonard, Esq., Chief of the Civil Rights Division of the United States Department of Justice. In a complex case such as this, it seems that exparte activity is inevitable. Nor do school board attorneys have a corner on the market. We have reference to:

(1) Petitioners exparte conference with the District Court in March 1970.*55

(2) The Justice Department's exparte hearing before the district court on September 14, 1970.*56

(3) Petitioners' failure to serve all parties with copies of important pleadings, and the making of false certification of service.*57

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*55 As referred to in Petitioner's own Motion For Injunction Pending Appeal, filed in the Court of Appeals in March 1970. See School Board's Opposition to the Motion For Injunction, pages 3 and 4 and footnote 1.

*56 See: School Board's Report To The Court, September 16. 1970.

*57 Petitioner's Motion For Summary Reversal filed in the Court of Appeals on August 17, 1970 was not served on all parties. See: Petition of the Mobile County Council of Parent-Teacher Associations (one of the parties) for Rehearing and a Stay of the Court of Appeals Order of August 28, 1970 which resulted from the exparte hearing on the motion for summary reversal (pages 5-6), filed in the Court of Appeals on September 4, 1970.

(4) The Justice Department's exparte submission of documentary material, not a part of the record, to the Court of Appeals.*58

(5) The Court of Appeals failure to notify all parties and counsel of hearings in chambers as a result of which the Mobile County Council PTA, one of the parties, was not present at a most important conference in the Chambers of Judge Bell on August 24, 1970.*59

We do not complain of these occurrences. We simply note them, lest the impression be left that the School Board alone is at fault.

(c) **Techniques to Maintain Segregation**

Closing schools: Contrary to Petitioners implication, every school closing in the last five years has resulted in an **increase** in the extent of desegregation, rather than a decrease. We would refer you to the full discussion at pages 30-33 of this brief.

School Construction: The last new schools constructed in the system opened their doors in 1967 (two) and 1968 (one). All three have bi-racial student bodies (see page 15 of this brief). Two proposed construction projects in 1968-69 were approved by the District Court and reversed by the Court of Appeals. One has now been abandoned and the other has an assigned enrollment of 454 black and 247 white (see page 15 of this brief).

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*58 See:

(1) School Board's Petition For Rehearing, filed in the Court of Appeals on June 24, 1970.

(2) School Board's Objection To and Motion To Strike and Expunge filed in the Court of Appeals on March 28, 1970.

(3) School Board's Objection to a portion of the record, filed in the District Court on March 28, 1970.

*59 See: Petition of PTA Council for Rehearing and For Stay filed in the Court of Appeals on September 4, 1970.

Manipulating Attendance Zones and Portable Classrooms: Since 1965 all students have been assigned to schools on the basis of zones either approved by the court or drawn by the court, excepting a brief period of freedom of choice (see pages 22-41 of this brief). Portable classrooms are used only to provide emergency space to accommodate overloads resulting from the assignment of students by the court (see pages 17-18 of this brief).

Changing Grade Structure: Unquestionably this school system has had a varied grade structure. Initially this resulted in part because of its combination rural-urban character, and in part because of the continuing effort to shift from the old style elementary, junior high, senior high concept (elementary grades 1-6, junior high grades 7-9, senior high grades 10-12) to the more modern middle school concept (elementary grades 1-5, middle school grades 6-8, senior high grades 9-12). In more recent times the varied grade structure has resulted from the **court orders** which have imposed upon the system a number of grade structure arrangements thought to be educationally unsound; such as a school for grades 6-9, or a school for grades 1, 2, 3 and 5, or a school serving grade 8 only (as proposed by HEW), or a school serving grades 1 and 2 only or 5 and 6 only (as contained in Plan B-1 Alternative proposed by Petitioner, pendente lite).

Bussing of Black Students: Admittedly, during the era of the dual system and until a short time after this litigation began, black students were bussed to preserve segregation. This is a shameful part of the **past** of this system, just as slavery is a shameful part of this nation's past. It was wrong then, it is wrong now; and two wrongs never made a right. It was educationally unsound then, it is educationally unsound now. Those who would attempt to justify bussing now, on the basis of bussing in the past, are seriously hampered by their own obvious inability to deter-

mine whether they are more interested in education or **retribution and revenge.** Petitioner cites to the court impressive figures to indicate the existence of substantial bussing now. The court must bear in mind, as Petitioner failed to note, that all of this bussing is in the **rural** portion of the system where there has always been and probably always will be a substantial transportation need to fill. The mere existence of transportation in the rural part of the system hardly stands as justification for the creation of an urban transportation system. Transportation in the rural portion of the system is of course on a fully integrated basis (see pages 11-12 of this brief).

VI. The Relief That Is Needed

The desegregation plan now in implementation, insofar as it concerns the schools **east** of Interstate Highway 65, is a piecemeal concoction put together by the Court of Appeals from various bits and pieces devised at various times by HEW, the Justice Department and the District Court. It has no integrity, nor rationality.

While the Court of Appeals spoke in terms of devising a plan consisting of **neighborhood schools**, and Petitioner has seized upon this as a vehicle to place before this court a consideration of the constitutionality of the neighborhood school concept, the plan devised and promulgated by the Court of Appeals is anything but a neighborhood school plan. To immediately verify this, one need only look at the map reflecting the elementary and junior high school zones devised by the court and now in use (the maps filed in the District Court on July 30 and July 13, 1970, respectively).

Based upon these zones, sixth grade students in the Mertz elementary zone for example are required to travel up to seven (7) miles diagonally across the City of Mobile, crossing six major traffic thoroughfares — — U.S. High-

way 90, Cottage Hill Road, Airport Boulevard, Dauphin Street, Old Shell Road and Springhill Avenue (U.S. Highway 98) — — at peak traffic hours to attend a school that has an overload of almost 600 students (capacity 986, assigned enrollment 1525); while their **true neighborhood school**, Mertz Elementary School is within easy walking distance of less than a mile and a half and has vacant space. There are many other similar examples, but this should suffice to illustrate the point that the plan devised and promulgated by the court is not a neighborhood school plan, notwithstanding the court's characterization of it as **such.**

The school year traditionally opens in September each year. Normally, planning for each year would commence the preceding April or May. For the past five years it has been impossible to undertake any real pre-planning because of last minute court orders requiring substantial rearrangement of the school system in one way or another, such as a shift from neighborhood attendance zones to complete freedom of choice and then back again, or a substantial rearrangement of attendance zones and grade structure. Court orders requiring new and different desegregation plans were imposed upon this school system on August 16, 1966 for the 1966-67 school year; August 24, 1967 for the 1967-68 school year; July 29 and August 2, 1968 for the 1968-69 school year; and on August 1, 1969 for the 1969-70 school year. The 1969-70 school year was further disrupted by a further court order on January 31, 1970 requiring mid-year reassignment of some 15,000 students. Since January 1, 1970 this school system has already been under six different court ordered desegregation plans, none of which have been prepared by the Board or its professional staff. Three of these plans have been fully implemented, and three superseded by subsequent orders before they could be placed into full implementation.

Since October 1967, the desegregation plans implemented in this school system have been devised either by the District Court, the Court of Appeals, the Justice Department, HEW, or some combination thereof. The School Board and its professional staff people have been completely shoved out of the picture, and the chaos prevalent in the school system at this time is the end result. Neither of these parties seems to be able to satisfy the other, and the petitioner has **never been satisfied with anything.** As a result, the school system has become nothing more than a bloody corpse battered from pillar to post now lying there oozing its life's blood away while being carved and hacked to bits by its various antagonists. The death knell of utter chaos and collapse can be heard pealing softly in the distance, moving closer day by day.

The litigating parties in this case are the NAACP, and the School Board. It is not they, however, who are suffering from the seemingly interminable turmoil that the courts have unwittingly created; it is the public school children of Mobile County, black and white alike. Nothing speaks more eloquently of this than the following statistical table comparing the advance of the desegregation process year by year since 1965 when substantial integration first occurred, to the achievement of fourth grade students systemwide on the nationally recognized California Battery Achievement Test.

	1965 -66	1966 -67	1967 -68	1968 -69	1969 -70	1970 -71
Total number of schools	97	98	96	91	89	
Total number of schools with a bi-racial student body	10	15	34	57	68	
Total number of schools with a bi-racial faculty	0	0	10	89	88	
Total number of students enrolled in bi-racial schools	10474	15636	28558	47560	55314	
System wide achievement level (4th grade students) California Battery Scores as compared to grade placement. (grade placement equals 100%)	104.4%	100%	99%	91.5%	89.7%	Not Yet Compiled

In the table, grade placement equals 100%. Note that in the 1965-66 school year fourth grade students system-wide were achieving at a level 4.4% above fourth grade standards. Since that time there has been a steady downward trend, so that by last school year, 1969-70, fourth grade students system-wide were achieving at a level 10.3% below fourth grade standards. The tests have not yet been given for the current school year, but the results are predictable.

We urge this Court to breathe the breath of life back into this dying school system. We urge this Court to

direct the Court of Appeals to remand this case to the District Court for the formulation of a revised plan of desegregation for that part of the urban portion of the school system lying **east** of Interstate Highway 65; that the District Court be directed to:

1. Require the School Board to prepare and submit a proposed plan to the court;
2. Receive and consider any objections or modifications to the School Board's proposed plan, that any party to this case may wish to file;
3. Have an evidentiary hearing;
4. Approve a new plan by January 1, 1971 for implementation beginning the second semester of this school year, in February 1971.

We further urge that the District Court be directed to undertake the above in the light of certain principles that we shall propose at the conclusion of this brief.

SUMMARY OF ARGUMENT

The Mobile County Public School System was at one time a dual school system. The dual system has now been completely disestablished, and the Mobile County Public School System is now a fully integrated unitary school system.

The school system has been involved in desegregation litigation since 1963. This has resulted in a succession of orders by the District Court and the Court of Appeals, each requiring some further or different modification in the plan of desegregation being implemented in the school system. The School Board and its professional staff have sought in good faith to implement, properly and promptly, each order of the Court as it has been imposed; and to

otherwise discharge their legal and constitutional obligation, as it has from time to time been interpreted and defined by the Courts.

Since October 1967, the desegregation plans that have been implemented in the system have been devised by the District Court, the Justice Department, HEW, the Court of Appeals, or some combination thereof. The School Board and its professional staff have been completely shoved out of the picture. Since January 1, 1970 six different court ordered desegregation plans have been imposed upon the school system, none of them have been prepared by the Board or its professional staff. As a result, the school system is in a position of near chaos; faculty and staff morale is at low ebb; the Superintendent has resigned; enrollment has dwindled from 79,000 to approximately 68,000; system-wide student achievement has steadily declined for the past five years, taking a course essentially opposite the advance in the desegregation process during this same time period.

The Orders of the District Court and of the Court of Appeals now being implemented and now before this Court for review require: (a) the assignment of faculty throughout the system on the basis of a 60/40 racial ratio, (b) the assignment of students (in that part of the city or urban portion of the system **east** of Interstate Highway 65) to schools on the basis of what the Court of Appeals contends to be unitary geographic zones resulting in **neighborhood schools**. This is a totally inaccurate description of the content and effect of the court's orders. True, the zones are unitary, but they do not comport with the neighborhood school concept and do not result in neighborhood schools, due to gross gerrymandering, un-natural pairing of schools, and obvious inattention to numerous factors that would have been considered in the creation of a true system of neighborhood schools. Essentially, assignment

of students is on a basis calculated to produce an arbitrary racial balance of students in the schools concerned.

The orders of the court now in implementation result in the assignment of approximately 64,306 students (of a total of approximately 68,623 in the system) to schools with bi-racial student bodies. Nevertheless, Petitioners urge this court to reverse the orders of the lower courts, and pending the approval of a new desegregation plan by the District Court on remand, to order the implementation, pendente lite, of another plan of student assignment hastily prepared almost a year ago by HEW; which plan comes to this Court untested by hearing, unsupported by testimony and indeed totally unexplained.

It is the position of the respondent that the case should be remanded to the District Court for the development of a new plan of student assignment for that part of the system here concerned, consistent with the principles developed in the argument hereafter summarized. It is respondent's position in argument that:

I

The so-called plan B-I Alternative should not be imposed upon the Mobile County Public School System, because:

1. It has never been before any court for an evidentiary hearing; it is unproved, untested and unexplained.

2. On the other hand, upon the basis of the affidavit testimony of the Associate Superintendent who examined and analyzed it thoroughly, along with other members of the professional staff of the school system, it has been totally discredited.

3. It was hastily prepared by one with no knowledge of the school system. As a result it contains, in addition to

a number of overall functional drawbacks, approximately a dozen specific functional impossibilities.

4. It has been rejected by the lower courts as impracticable and educationally unsound.

5. It requires massive cross-town busing and cross-busing, beyond the immediate, as well as long range, capabilities of the school system.

II

The Orders of the lower court, insofar as they require the assignment of faculty on the basis of a racial ratio (60% white, 40% black) are contrary to what is required or permitted by the Fourteenth Amendment to the United States Constitution.

III

The constitutional foundation of all public school desegregation is the Fourteenth Amendment to the United States Constitution. **Brown v. Board of Education of Topeka**, 347 U.S. 483 (1954), in interpreting the Fourteenth Amendment, defines the constitutional rights of all public school students, black and white. This right is that they shall not be denied access to and use of public school facilities on account of race. This original interpretation has been both expanded and refined in subsequent cases, including **Green v. County School Board of New Kent County Virginia**, 391 U.S. 430 (1968) and **Alexander v. Holmes County Board of Education**, 396 U.S. 19 (1969), but it has not been changed nor abrogated, as indeed it could never be in view of the very language of the Fourteenth Amendment itself.

The Constitution of the United States neither requires nor permits the assignment of students in such a manner as

to achieve a racial balance in the school system. Similarly, the mere existence in this school system of seven schools with uniracial student bodies (2 all black and 5 all white, out of a total of 83 schools in the system) does not make this school system constitutionally deficient.

Under our Constitution, education is a right that must be made available to all on an equal basis; where dual school systems once existed they must be totally disestablished; students both black and white must be assigned to schools on a non-racial basis; school systems must be operated on a unitary basis within the framework of which no person is totally compelled to attend any school because of race or color, nor effectively excluded from any school because of race or color.

IV

Under our Constitution black and white public school students have an equal right to the benefit and protection of the Constitution and of the laws of the United States. Granted that every individual desire cannot be fulfilled and every individual problem solved, by and large, a true neighborhood school system is the most beneficial method of student assignment for the school system and for all children of the system, black and white. Assignment of all students on the basis of attendance zones fairly drawn to normal standards of educational soundness and upon the basis of non-racial criteria in order to produce as nearly as possible a system of unitary neighborhood schools, is a constitutionally sufficient plan of student assignment.

ARGUMENT

I

This School System Should Not Be Required to Attempt to Implement Plan B-I Alternative

What is Petitioner really seeking by certiorari in this case? **Ostensibly,** to have this Court review a decision of the Court of Appeals in order to insure Petitioners due process right to an evidentiary hearing, and to resolve conflicting rulings of the Courts of Appeal. We have already discussed in some detail (page 47) the evidentiary hearing aspect. From the standpoint of resolving conflicts, it is apparent that this would have been accomplished in **Swann v. Charlotte-Mecklenberg Board of Education** (Nos. 281 and 349), which was already before this Court when the Petition for Writ of Certiorari was filed in this case. Consequently there must be another reason. We suggest, that **in reality** what petitioner is really seeking, under the guise of pursuing an evidentiary hearing and resolution of conflicts, is to have this Court substitute its remote consideration and judgment for that of the District Court and the Court of Appeals, by ordering the *pendente lite* implementation of a desegregation plan that has already been rejected by both lower Courts on two different occasions as "impracticable" and "educationally unsound".

Under the circumstances it is revealing, important and perhaps essential to note that Plan B-I Alternative itself has **never** been before **any** court for an evidentiary hearing.

Plan B-I Alternative was prepared by HEW in two stages. The first stage was the work of Dr. Joe Hall of the Florida School Desegregation Consulting Center. It

was submitted to the District Court on July 10, 1969. Dr. Hall submitted a superficially impressive report of some 109 pages to the District Court. Well over half of these pages were devoted to a detailed discussion of typical Chamber of Commerce information, totally irrelevant to desegregation of the school system. For example, the report explains that among Mobile's major industries are cement, naval stores, ship repair, etc.; and its modern ocean terminal can handle 32 vessels simultaneously; and in 1965 unemployment in Mobile totaled 4.3 percent of the civilian "at place" labor force; and on and on it goes with reams of similar worthless information.*60

Dr. Hall's discovery testimony was taken by deposition, during which he declined to indicate just how much of the seventeen (17) days he spent on this matter was expended on such trifling, but he did reveal the following very significant facts:*61

> (a) The actual desegregation plan was prepared not by himself, but by one Dr. Stolee of Miami, Florida and one Dr. Weinkoff of South Carolina; both of whom had never been to Mobile before; both of whom had no prior contact with or information about Mobile or its school system; both of whom arrived in Mobile one day and departed the next, and prepared the recommendations during the short time of **less than 48 hours.**
>
> (b) He (Dr. Hall) had no ultimate authority with reference to the HEW report. Everything had to be approved by one Mr. Gregory Anrig of the Washington office of HEW. Mr. Anrig did not come to Mobile

*60 Refer to the HEW report filed in the District Court on July 10, 1969.

*61 Discovery deposition of Dr. Joe Hall, filed in the District Court.

and had no prior contact with or information about the school system. He had occasion to look at the proposed recommendations only once, for a short time, and yet required numerous changes and alterations.

Dr. Hall indicated to School Board officials that it was impossible for HEW to do a proper job of evaluating the school system and developing adequate recommendations within the time allowed by the Court for the report; and yet because of delay by HEW half of this time had elapsed even before he got started on his work. Dr. Hall also stated that he is professionally opposed to the busing of students for the sole purpose of achieving integration, and yet the ultimate HEW recommendations, after changes by Mr. Anrig, contained massive busing in pursuit solely of some sort of racial balance.*[62]

This first stage HEW report was filed in the District Court and was **totally unsupported** by testimony or explanation other than a very brief informal discussion with the District Court. This was conceded by Petitioner at pages 14b and 15b of the Appendix to its Petition for Writ of Certiorari previously filed in this Court in December 1969.

This report, and particularly the recommendations subsequently rejected as unsound by the lower courts but which Petitioner would now urge upon this Court, were soundly and thoroughly **discredited** by the only professional educator with any background knowledge of the school system who examined them.*[63]

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*[62] Affidavit testimony of James A. McPherson, filed in the District Court on July 29, 1969, page 4.

*[63] Affidavit testimony of James A. McPherson filed in the District Court on July 29, 1970 . . . . and . . . . Findings of Fact, April 14, 1970, pages 24-38.

The second state of Plan B-I Alternative was prepared by yet another HEW functionary, one Ernest S. Bunch who styles himself Acting Senior Program Officer, Equal Educational Opportunities, and submitted to the District Court on December 1, 1969. This stage was the result of less than two weeks attention by Mr. Bunch. Like Dr. Hall before him, Mr. Bunch had no prior contact with or knowledge of the school system.

Mr. Bunch's work took place over a period of less than two weeks, immediately prior to December 1, 1969. Mr. Bunch made no independent study of the school system, conducted no research and gathered no original statistical information. All Mr. Bunch did was to take statistical data from the earlier HEW report, juggle these statistics in several different ways and then set out four different alternative plans, one of which was labeled Plan B-I Alternative. Mr. Buch's ineptness is revealed in many aspects of his work, not the least of which are his recommendations that would make senior high schools out of elementary school plants, create one grade school and assign 2886 students to a school with a capacity of 980.

As with the original HEW report, this Plan B-I Alternative (as well as the other 3 alternatives) did not come before the Court for an evidentiary hearing, and in this instance there was not even an informal conference with the District Judge. Consequently, Plan B-I Alternative is not only totally **unsupported** by testimony, but was before the District Court and is now before this Court, even without **explanation**. In seeking to justify the soundness and integrity of his work in the report itself, Mr. Bunch is unbelievably terse, stating only, "all of the plans are based on educational concepts promulgated either recently or not so recently".

Plan B-I Alternative was subsequently thoroughly examined and studied by a professional educator, whose

affidavit testimony relative to this examination and study was filed in the District Court. This testimony pointed out numerous fatal defects, and totally discredited the plan, both from the standpoint of its educational unsoundness as well as its functional impossibility.*64

With this spurious background, it should not be surprising that Plan B-I Alternative is educationally unsound, administratively infeasible, detrimental to the school system as a whole including both black and white students, and functionally incapable of implementation. This has been recognized by both the District Court and the Court of Appeals, sitting en banc. (**Singleton v. Jackson**, supra).

Of the four different alternative plans submitted by HEW in its December 1, 1969 report, Plan B-I Alternative is by far the most unsound, most infeasible, most detrimental of all.

What are some of the specific defects in Plan B-I Alternative?

1. The plan purports to be based upon certain specific geographic zones, but no maps or other description reflecting or stating the location of the boundaries of zones is included with the plan. As far as present relevancy of the plan is concerned, the zones have been changed by the Courts on four separate occasions since the plan was filed on December 1, 1969. The plan, therefore, has absolutely no relation to reality at this time.

2. The basic statistical data upon which the plan was based is now outdated and inaccurate. The original statistical data was gathered and compiled by the School Board in September 1968, and reported to the court. It

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*64 Affidavit testimony of James A. McPherson, filed in the District Court on February 24, 1970 . . . . Findings of Fact, April 14, 1970, pages 24-38.

is now totally inaccurate. Spot checks made of this statistical information, shortly after the HEW report was filed on December 1, 1969, to determine accuracy and relevancy, indicated that in a number of instances the figures are in error by as much as 50%. The HEW report itself recognized this error and sought to excuse itself in advance with this seemingly innocuous statement: "These statistics may or may not agree with current figures of the Board of Education. However, they may be considered as relatively close approximates that could be used as a guide for a more precise sophistication in this vein." No doubt, fifty percent (50%) error is a close approximation to the sophisticated people of HEW, but it is quite impossible to operate a school system of 83 schools and 70,000 students on such a margin.

3. The plan requires the use of one elementary school (Gorgas) that has already been closed by the court and annexed to Toulminville High School (247 white, 454 black) on which campus it is located, to take care of an overload there which occurs as a result of other provisions of the existing Court ordered desegregation plan. This leaves no place for the 890 elementary students assigned to the Gorgas Elementary School by Plan B-I Alternative.

4. Similarly, Plan B-I Alternative requires for use as an elementary school, another school (Hall) that is already operating under the court ordered plan as a junior high school. Either the 1149 elementary students assigned to Hall by Plan B-I Alternative or the 1246 junior high students already assigned there by the Court of Appeals will have no school to attend.

5. Plan B-I Alternative does not assign to any school the 806 elementary students (300 white and 506 black) living in the Craighead zone.

6. Plan B-I Alternative makes no provision at all for the sixth grade students living in the following zones:

South Brookley	93
Williams	101
Indian Springs	76
Eight Mile	109
Dickson	121
Fonde	131
Shepard	74
Dodge	92
TOTAL	797

7. Plan B-I Alternative would assign 1174 elementary students to an Arlington-Council complex (Arlington capacity 476, Council capacity 544), but Arlington has already been closed by the Court, and is being used as a book depository and warehouse and as a laboratory for the in service training of teachers.

8. Plan B-I Alternative does not assign to any school the 591 elementary school students (424 white and 167 black) living in the Woodcock zone.

9. Utilizing Plan B-I Alternative, results in each of the 264 6th grade students in the Owens zone being assigned to two different schools at the same time.

10. Plan B-I Alternative requires two one-grade elementary schools; seventeen two-grade elementary schools and fifteen three-grade elementary schools, making the development of an adequate program in these schools impossible, and creating an intolerable transportation problem for parents because of the helter-skelter separation and disbursement of students to separate schools. Some students will have been assigned to as many as four different schools by the time they reach the 6th grade, and none will have been assigned to less than three.

11. The basic concept and arrangement of Plan B-I Alternative is a non-contiguous pairing of schools, re-

quiring one-half, more or less, of the students directly affected by the plan to attend school each year in schools far removed from their homes and neighborhoods. In all instances but ten, this requires the students to attend schools that are essentially across town from their homes; in the excepted instances (ten schools) it requires attendance not only across town, but in a different city (Indian Springs, Brazier, Robbins, Hamilton, Chickasaw, Palmer, Glendale, Fonde, Will and Whistler). There are approximately 27,320 students directly affected by Plan B-I Alternative; this means that each year approximately 13,660 of these students would be so affected. It should be kept in mind that these are not high school or junior high school students, but young elementary school students in grades 1 through 5.

12. Because of the non-contiguous nature of the pairings and the illogical manner in which they have been set up, requiring the movement of students long distances across town and from one city to another, it will be impossible for the approximately 13,600 cross-town students to walk to their schools and vehicular transportation will be imperative. To complicate matters, most of the pairings present travel requirements that are inconsistent with commercial transportation routes and normal vehicular traffic patterns.*[65] The only answer would be school bus transportation furnished by the School Board. At this point in time, this is totally impossible; not merely difficult, but impossible.

To implement Plan B-I Alternative would require 233 new buses. The acquisition cost of these buses would be approximately $1,269,484.19 and there would be a yearly

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*[65] The Mobile municipal transit system has within the past year closed entirely, then reopened on a limited basis. At this point it is entirely speculative as to what bus service, if any, will be available from time to time.

operating cost of $366,089.60 per year. This school system simply does not have the financial ability to accomplish such a requirement. It is entirely questionable as to whether the school system could adjust its finances to accommodate this requirement over a period of years; it is totally incapable of doing so immediately.*66

In Petitioners' brief a studied effort is made, by referring to the present existence of bus transported students, to give the impression that the bussing inherent in Plan B-I Alternative would be justified and would cause little or no problem. In evaluating this contention one must not lose sight of the fact that this is a consolidated city-rural system and that bus transportation has historically been provided for students in the rural part of the system, as is traditional with virtually all rural and consolidated systems. The existence of rural transportation, however, is totally irrelevant and unrelated to the problem that would be created in the city portion of the system by Plan B-I Alternative, and offers no justification for Plan B-I Alternative nor solution to the massive transportation problem it would create.

One further point must be considered. Given the financial ability to purchase the necessary buses, they still could not be obtained. In June 1970, in an effort to replace worn equipment and to improve existing service with relation to present needs, an order was placed for 50 new buses. Some weeks later, certain budgetary deficiencies and other financial problems necessitated a reduction of the order, at which time the manufacturer advised the school system that even the reduced order would not be filled because no buses are available for purchase.

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*66 Affidavit testimony of James A. McPherson filed in the District Court on February 24, 1970, pages 11-12.

These are some of the more readily apparent defects in Plan B-I Alternative which render it totally incapable of implementation. The Petition makes the bare, unsupported statement that Plan B-I Alternative has been **proved feasible.** This is simply not true. The plan has not been **proved;** on the contrary, it is not only unproved, but **untested,** and comes to the Court unsupported by testimony and even without explanation. It is not **feasible;** it cannot be implemented.

Under such circumstances all logic and reason would dictate that this court defer to the on the scene judgment of the District Court and the Court of Appeals, both of whom have rejected Plan B-I Alternative. This is entirely consistent with the prior holdings of this Court and the Courts of Appeal. **Brown v. Board of Education of Topeka,** 349 U.S. 294; **Green v. County School Board of New Kent County, Virginia,** 391 U.S. 430; **United States v. Jefferson County Board of Education,** 372 F.2d 836, 380 F.2d 385, Cert. Denied 389 U.S. 840; **Downs v. School Board,** 236 F.2d 988.

II

Does the Constitution of the United States Require That Public School Systems of the United States Assign the Teachers of the Systems to the Schools of the Systems in Such a Manner as to Achieve a Racial Balance of Teachers in Each School, or Some Other Arbitrary Mathematical Ratio of Black and White Teachers in the Schools of the System?

It is the position of the Respondent that not only is such action **not** required, but that constitutionally it cannot be permitted.

The first reference to faculty assignments appeared in **Brown II** where reference was made to the fact that the Courts may consider problems relating to personnel.

Brown v. Board of Education of Topeka, 349 U. S. 294, 400 (1955).

In a number of subsequent cases, the Courts generally held that the district courts might defer consideration on the faculty question pending further progress with respect to student desegregation. **Board of Public Instruction of Duval County, Florida v. Braxton,** 326 F2d 616, 620 (C.A. 5th 1964) cert. den. 377 U.S. 924 (1964); **Bowman v. County School Board,** 382 F2d 326 (C.A. 4th 1967).

At first, the Courts required only that faculty meetings and staff conferences be desegregated. **Singleton v. Jackson Municipal Separate School District,** 384 F2d 729 (C.A. 5th 1965). Subsequently boards were directed to make "an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators and other personnel." **Singleton v. Jackson Municipal Separate School District,** 355 F2d 865 (C.A. 5th 1966). Then came **United States v. Jefferson County Board of Education,** 372 F2d 836 (C.A. 5th 1966), where, after observing that "These and other decisions compel states in this circuit to take affirmative action to reorganize their school systems by integrating the students, faculties, facilities and activities," (p. 868) the Court set forth a model decree which required the assignment of faculties so that at least one, and "wherever possible... more than one teacher of the minority race . . . be assigned to each school" (p. 900).

In **United States v. Montgomery County Board of Education,** 395 U.S. 225, (1969), the Supreme Court held that the Court of Appeals had erred in setting aside a district court order requiring the Montgomery County, system to achieve a racial balance in faculty assignments as a long term goal. However, this opinion did not purport to impose such a requirement on all systems, but merely recognized the discretionary power of a trial judge under the

particular facts of a specific case. At least it would so seem from the decision of the Fifth Circuit Court of Appeals rendered one month later in **United States v. Board of Education of Baldwin County**, 417 F2d 848 (C.A. 5th 1969), where a ratio of one in five for 1969-70 was required.

In December 1969 the Fifth Circuit Court of Appeals, in **Singleton v. Jackson Municipal Separate School District**, 419 F2d 1211 (C.A. 5th 1969), directed the 13 systems involved in that appeal, including Mobile County, as well as all other school systems then in litigation, to meet the following requirements:

> "Effective not later than February 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system. The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments." (pp. 1217-18).

Then, in its opinion of June 8, 1970 the Fifth Circuit Court of Appeals required the Respondent School Board to achieve a 60/40 ratio of teachers throughout the system.

It is our contention that racial faculty assignments are invalid, indeed unconstitutional.

The necessary effect of **Brown v. Board of Education of Topeka**, 347 U.S. 483 (1954), was to elevate to constitu-

tional doctrine the first Mr. Justice Harlan's dissent in **Plessy v. Ferguson**, 163 U.S. 537, 559 (1896), to the effect that:

> "Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved."

Brown I was predicated not on an evidentiary finding that equal educational opportunity could not be achieved in fact except through integration, but rather upon the holding that racial classifications are invidious per se. **United States v. Jefferson County Board of Education**, 372 F2d 836, 871 (C.A. 5th 1966), adhered to on rehearing en banc, 380 F2d 385 (1967), affd. sub nom. **Caddo Parish School Board v. United States**, 389 U.S. 840 (1967).

In **Bolling v. Sharpe**, 347 U.S. 497, 499, 884 (1954), this Court declared:

> "Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." (p. 499).

In striking down the Knoxville, Tennessee minority to majority transfer provision of the system's school desegregation plan, the Court declared:

> "Classifications based on race for purposes of transfers between public schools, as here, violate the Equal Protection Clause of the Fourteenth Amendment. As the Court said in Steele v. Louisville & N.R. Co., 323 U.S. 192, 203, 98 L.ed. 173, 194, 65 S. Ct. 226 (1944),

racial classifications are 'obviously irrelevant and invidious.'" **Goss v. Board of Education of Knoxville,** 373 U.S. 683, 687 (1963).

In **Teel v. Pitt County Board of Education,** 272 F. Supp. 703, 709-10 (D.C. N.C. 1967), the Court declared:

> "The Court does not intend, nor does it read the law to require, involuntary reassignment of teachers to achieve racial blending of faculties in each school in the Pitt County System. To do so would clearly be nothing more than racial assignments for racial purposes; such would indeed be inimical to a rational concept of equal protection of all persons under the law without regard to their race. A compulsive mass transfer to achieve racial blending would be an ill-advised and disruptive measure."
>
> "Desegregation and integration of faculty can and must be accomplished without the use of racial criteria, for equal protection of the law must work in both directions to be in fact and in law equal."

The Sixth Circuit, in **Deal v. Cincinnati,** 419 F.2d 1387 (C.A. 6th 1969), has also spoken on the subject:

> "There was no constitutional duty on the part of the Board to balance the races in teachers' employment and assignments. Teachers should be selected primarily on the basis of merit." (at 1393).

And, as held recently in **Clark v. Board of Education of Little Rock School District,** ... F.2d ... (C.A. 8th May 13, 1970), ". . . (T)he ultimate goal is the assignment of teachers solely on the basis of educationally significant factors, wherein race in and of itself is irrelevant."

In **Alexander v. Holmes County Board of Education,** 396 U.S. 19 (1969), this Court directed the lower federal courts in school cases to require school systems to,

"(B)egin immediately to operate as unitary school systems within which **no person is to be effectively excluded from any school because of race or color.**" (emphasis supplied)

The basic position underlying **Brown I** was that racial classifications could no longer be made, and that persons could not be dealt with by governments on a racial basis. This is entirely consistent with the rationale of the cases referred to above that reject the notion of assigning faculty on a racial basis. Obviously assigning faculty on a 60/40 ratio, as in the instant case, is assignment on a racial basis.

The judicial rejection of classification based upon race, distinctions based upon race and racial quotas, is not confined to public school desegregation cases, but is woven throughout the fabric of the law.

In **Loving v. Virginia**, 388 U.S. 1 (1967), a state miscegenation statute was declared void under the 14th Amendment on the reasoning that the statutes,

". . . (R)est solely upon distinctions drawn according to race." (p. 11)

In **McLaughlin v. Florida**, 349 U.S. 184 (1964), in striking down a Florida statute making it illegal for a Negro man and white woman to cohabit together, the Court held:

"But we deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications 'constitutionally suspect,' Bolling v. Sharpe, 347 U.S. 498, 499, 98 L.Ed. 884, 886, 74 S.Ct. 693; and subject to the 'most rigid scrutiny,' Korematsu v. United

States, 323 U.S. 214, 216, 89 L.ed. 194, 198, 65 S. Ct. 193; and 'in most circumstances irrelevant' to any constitutionally acceptable legislative purpose, Hirabayashi v. United States, 320 U.S. 81, 100, 87 L.Ed. 1774, 1786, 63 S. Ct. 1375. Thus it is that racial classifications have been held invalid in a variety of contexts. See, e.g., Virginia Board of Elections v. Hamm, 379 U.S. 19, 13 L.Ed. 2d 91, 85 S. Ct. 157 (designation of race in voting and property records); Anderson v. Martin, 375 U.S. 299, 11 L.Ed. 2d 430, 84 S.Ct. 454 (designation of race on nomination papers and ballots); Watson v. City of Memphis, 373 U.S. 526, 10 L.Ed. 529, 83 St. Ct. 1314 (segregation in public parks and playgrounds); Brown v. Board of Education, 349 U.S. 294, 99 L.Ed. 1083, 75 S.Ct. 753 (segregation in public schools)."

In the jury discrimination cases, it has been held that "A defendant in a criminal case is not constitutionally entitled to demand a proportionate number of his race on the jury which tries him nor on the venire or jury roll from which petit jurors are drawn." **Swain v. Alabama,** 380 U.S. 202, 208 (1965).

Similarly, a deliberate effort to limit the number of jurors because of racial considerations is unconstitutional. In **Cassell v. Texas,** 339 U.S. 282, 286-7 (1950), it was held:

> "We have recently written why proportional representation of races on a jury is not a constitutional requisite. Succinctly stated, our reason was that the Constitution requires only a fair jury selected without regard to race. Obviously the number of races and nationalities appearing in the ancestry of our citizens would make it impossible to meet a requirement of proportional representation. Similarly, since there can be no exclusion of Negroes as a race and no dis-

> crimination because of color, proportional limitation is not permissible." (p. 286)

On the other hand in **Collins v. Walker**, 329 F.2d 100 (C.A. 5th 1964), an indictment against a Negro was held unconstitutional where it had been returned by a specially empaneled grand jury upon which 6 Negroes were deliberately included, the Court declaring:

> "A Negro is entitled to the equal protection of the laws, no less and no more. He stands equal before the law, and is viewed by the law as a person, not as a Negro. An accused cannot demand a mixed grand jury, some of which shall be of his same race. What an accused is entitled to demand under the Constitution 'is that in organizing the grand jury there shall be no discrimination against him because of his race or color.' "

In other words, a person may not be **included** or excluded solely because he is a negro or because he is white. The requirement is that the system be designed without regard to race, and once the system is so designed, the fortuitous results that arise thereunder in any given instance give rise to no legitimate cause for complaint just because one race is not represented or is over-represented thereon.

Racial quotas uniformly have been held invalid. **Wright v. Rockefeller**, 211 F. Supp. 460 (D.C. N.Y. 1963), aff'd. 376 U.S. 52 (1964); **Progress Development Corp. v. Mitchell**, 182 F. Supp. 681 (D.C. Ill. 1960), rev'd. in part 286 F. 2d 227 (C.A. 7th 1961); **Banks v. Housing Authority**, 120 Cal. App. 2d 1, 260 P.2d 668 (1953), cert. den. 347 U.S. 974 (1954); **Taylor v. Leonard**, 30 N. J. Super. 116, 103 A.2d 632 (1954). "The law does not require a maximum of racial mixing or striking a racial balance accurately reflecting the racial composition of the community or the school population." **United States v. Jefferson County Board of Education**, supra, 372 F.2d at 847.

In the context of racial quotas in public housing it was stated of such a requirement in **Taylor v. Leonard**, 30 N.J. Super. 116, 103 A.2d 632 (1954):

> ". . . it is also a violation of section 1 of the Fourteenth Amendment of the Constitution of the United States.
> It is immaterial that the quota actually used bears some relation to the percentage of negro population in the particular municipality.
> The evil of a quota system is that it assumes that Negroes are different from other citizens and should be treated differently. Stated another way, the alleged purpose of a quota system is to prevent Negroes from getting more than their share of the available housing units. However, this takes for granted that Negroes are only entitled to the enjoyment of civil rights on a quota basis."

Another trouble with quotas and the exclusions they necessarily entail was pointed out in **Traux v. Raich**, 239 U.S. 33 (1915). In holding quotas respecting alien employment rights unconstitutional under the Fourteenth Amendment, the Court observed:

> "If the restriction to twenty percent now imposed is maintainable the State undoubtedly has the power if it sees fit to make the percentage less" (pp. 42-43).

The existence of racial quotas would presumably require **constant quota readjustments** as the racial composition of the body upon which the quotas are based changes. The best way to avoid the problem is obviously to avoid its beginnings. See **West Virginia State Board of Education v. Barnette**, 319 U.S. 624, (1942).

Manifestations of Congressional understanding of what the Constitution requires does not comport with what the

Fifth Circuit Court of Appeals has held in **Singleton**, supra, nor in the instant case, for in section 703 (a) (2) of the Civil Rights Act of 1964, it was provided that:

> "It shall be an unlawful employment practice for an employer—
>
> • • • • •
>
> "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." **42 USCA 2000e- 2 (a)**.

Section 703 (j) of the same title declares:

> "Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area or in the available work force in any community, State, section, or other area." **42 USCA 2000e-2(j)**.

Granted that these statutes by their own terms do not apply to state employment, they certainly represent an authoritative Congressional declaration of what it feels

to be required by the Constitution, which by analogy is referrable to Section 5 of the Fourteenth Amendment.

The Elementary and Secondary Education Act of 1965, as amended, declares:

> "In the administration of this chapter no department, agency, officer or employee of the United States, shall exercise any direction, supervision or control over the personnel, curriculum or program of instruction of any school or school system, or any local or state educational agency **or require the assignment or transportation of students or teachers in order to overcome racial imbalance.**" (emphasis supplied)

Another inherent problem, either beyond the comprehension of courts requiring racial balance of faculties, or if comprehended, then ignored, is the fact that no correlation whatsoever is apt to exist between the system-wide racial composition of faculty and the black-white ratio of French teachers, science teachers, math teachers, or teachers of any other particular field or qualification.

In the words of **Clark**, supra,

> ". . . (T)he ultimate goal is the assignment of teachers solely on the basis of educationally significant factors, wherein race in and of itself is irrelevant."

With respect, it is the position of this respondent that the assignment of faculty in this school system on a racial ratio basis, as required by the Orders, Opinions, judgments and mandates of the Court of Appeals and the District Court, is not required by the Constitution, and is indeed unconstitutional.

III

Does the Constitution of the United States Require That the Public School Systems of the United States Assign the Students of the Systems to the Schools of the Systems in Such a Manner as to Achieve a Racial Balance of Students or Some Arbitrary Mathematical Ratio of Black and White Students in the Schools of the Systems?

Does the Mere Existence of a School With a Student Body Made Up of Students All of One Race, in a Public School System That Is Otherwise Completely Integrated and Unitary, Render the School System Constitutionally Deficient?

Does the Existence of Two (2) Schools That Have All Black Student Bodies and Five (5) Schools That Have All White Student Bodies, in a School System of Eighty-Three (83) Schools That Is Otherwise Completely Integrated and unitary, Render the School System Constitutionally Deficient?

It is the position of Respondent that the Constitution not only does not require a racial balance of students in the schools of the system, but that a plan of student assignment, assigning students to schools in pursuit of such balance would be constitutionally improper. It is Respondents further position that the mere existence in this school system or any other of a school or schools with uniracial student bodies, does not in and of itself render such school system constitutionally deficient.

The constitutional foundation of all public school desegregation is the Fourteenth Amendment to the United States Constitution, which provides that:

> "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

In **Brown I (Brown v. Board of Education of Topeka,** 347 U.S. 483 (1954)) this Court held that the Negro children for whom the action was brought, were "by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Brown I removed all state restraints, based upon race, upon admission to public schools. It also defined the constitutional rights of **all** children, both black and white, indicating that none of them can be denied access and use of public educational facilities on account of race, stating that the opportunity for education is:

> "a right which must be made available to all on equal terms."

But that is the limit of the decision, as it necessarily had to be, in view of the language of the Fourteenth Amendment. **Brown I** also articulated another important principle:

> "Public education is perhaps the most important single function of local government."

As stated in the brief for the United States in **Brown II** (Nos. 1, 2, 3, 4 and 5, October Term 1954, page 5):

> "These problems must be viewed in proper perspective. The starting point must be a recognition that we are dealing here with basic constitutional rights, and not merely those of a few children but of millions."
>
> "A prime consideration in dealing with the problems of desegregation must be that the systems of public education in the United States **should not be adversely affected.** Public education is one of the glories of the United States, and an indispensable source of its power. The richest resources of the United States are its citizens, and, as the Court has observed (347

U.S. at 493), education 'is the very foundation of good citizenship' ". (emphasis supplied)

Brown I was followed very shortly by **Brown II**. The direction in **Brown II**, to the District Courts upon remand, is notable. They were told to consider, as was pointed out to this Court by Petitioner's Counsel, Mr. Greenberg and Mr. Nabrit, in their brief in **Green** (No. 695, October term 1967, page 31):

> "problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools **on a non-racial basis**, and revision of local laws regulations which may be necessary in solving the foregoing problems (349 U.S. at 300-301)." (emphasis supplied)

In its brief in **Brown II** the United States seems to have held the same opinion. There it was stated:

> "The Constitution prohibits the maintenance of segregated school systems. It does not compel the adoption of any specific type of nonsegregated system. **The decisive inquiry is whether race or color has been entirely eliminated as a criterion in the admission of pupils to public schools.** The essence of the Court's decision in these cases is that there be no governmental action which enforces or supports school segregation. In passing upon the acceptability of proposed programs, the criterion should be whether the defendants have sustained the burden of showing that their particular program will bring about the **total elimination of racial considerations in the admission of pupils to public schools** as rapidly as local conditions allow." (emphasis supplied)

And in **Brown I** Thurgood Marshall, Esq. now Mr. Justice Marshall, in response to a question from Mr. Justice Frankfurter stated:

> "I think, sir, that the decree would be entered which would enjoin the school officials from, one, enforcing the statute; two, from **segregating on the basis of race or color.** Then I think what ever district lines they draw, if it can be shown that those lines are drawn on the basis of race or color, then I think they would violate the injunction. **If the lines are drawn on a natural basis, without regard to race or color, then I think that nobody would have any complaint.**
>
> For example the colored child that is over here in this school would not be able to go to that school. But the only thing that would come down would be the decision that whatever rule you set in, **it shall not be on race,** either actually or by any other way. It would violate the injunction, in my opinion."

In the ten years following Brown there were a veritable host of cases commenting upon what Brown had decided and what it had not decided.

Briggs v. Elliott, 132 F.Supp. 776:

> "Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools. . . . What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. . . . The Constitution, in other words, does not require integration. It

merely forbids discrimination. . . . It merely forbids the use of governmental power to enforce segregation."

Avery v. Wichita Falls Independent School Dist., 241 F.2d 230.

"The Constitution as construed in the School Segregation Cases * * * forbids any state action requiring segregation of children in public schools solely on account of race; it does not, however, require actual integration of the races."

Borders v. Rippy, 247 F.2d 268.

"The equal protection and due process clauses of the fourteenth amendment do not affirmatively command integration, but they do forbid any state action requiring segregation on account of their race or color of children in the public schools."

Holland v. Board of Public Education, 258 F.2d 730.

"The fourteenth Amendment does not speak in positive terms to command integration, but negatively, to prohibit governmentally enforced segregation."

Boson v. Rippy, 285 F.2d 43.

"Negro children have no constitutional right to the attendance of white children with them in the public schools. Their constitutional right to 'the equal protection of the laws' is the right to stand equal before the laws of the State; that is, to be treated simply as individuals without regard to race or color."

Cohen v. Public Housing Administration, 257 F.2d 73

"Neither the Fifth nor the Fourteenth Amendment operates positively to command integration of the races but only negatively to forbid governmentally enforced segregation."

Evers v. Jackson Municipal Separate School District, 328 F.2d 408

> "This is not to say that the Fourteenth Amendment commands integration of the races in the schools, or that voluntary segregation is not legally permissible . . . The Supreme Court did not hold otherwise in Brown v. Board of Education, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873. Its holding was that enforced racial segregation in the public schools is a denial of the equal protection of the laws enjoined by the Fourteenth Amendment. Cooper v. Aaron, 1958, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed. 2d 5."

In 1958, in the Little Rock School case, **Cooper v. Aaron**, 358 U.S. 1 (1958), this Court held that:

> "(T)he constitutional rights of **children** not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executive or judicial officers . . ."

It is perhaps notable that this Court did not say black children, or white children, but **children.**

In **Rogers v. Paul**, 382 U.S. 198 (1965), this Court held that a school desegregation plan under which children were assigned to school on the basis of race was constitutionally impermissible.

The Fifth Circuit departed from this well established doctrine in **Jefferson (United States v. Jefferson County Board of Education**, 372 F.2d 836). Even there the dissent was strong. In his dissenting opinion Judge Bell said:

> "Then there is the matter of personal liberty. Under our system of government, it is not to be restricted except where necessary, in balance, to give others

> their liberty, and to attain order so that all may enjoy liberty. History records that sumptuary laws have been largely unobserved because they failed to recognize or were needlessly restrictive of personal liberty . . . . They (the majority opinion) **cast a long shadow over personal liberty as it embraces freedom of association and a free society. They do little for the cause of education.** (Emphasis supplied.)

And in his dissent Judge Gewin stated:

> ". . . There must be a mixing of the races according to majority philosophy even if such mixing can only be achieved under the lash of compulsion. . . . Accordingly, **while professing to vouchsafe freedom and liberty to Negro children, they have destroyed the freedom and liberty of all students, Negro and white alike.** There must be a mixing of the races, or integration at all costs, or the plan does not work according to the opinion. Such has not been and is not now the spirit or the letter of the law. . . . When our concepts as to proportions and percentages are imposed on school systems, notwithstanding free choices actually made, **we have destroyed freedom and liberty by judicial fiat; and even worse, we have done so in the very name of that liberty and freedom we so avidly . . . embrace.**" (Emphasis added.)

Notwithstanding the Fifth Circuit's departure, the other circuits remained fast, as indicated by the following cases: Fourth Circuit (Bradley v. School Board of City of Richmond, 382 U. S. 103; the Sixth Circuit (Monroe v. Board of Commissioners of City of Jackson, 380 F.2d 955 (1967); the First Circuit (Springfield School Committee v. Barksdale, 348 F.2d 261 (1965); the Seventh Circuit (Bell v. School City of Gary, 324 F.2d 209 (1963), cert. den., 377 U.S. 924); the Eighth Circuit (Clark v. Board of Education of Little Rock School District, 369

F.2d 661 (1966), reh. den., 374 F.2d 569) and the Tenth Circuit (Downs v. Board of Education of Kansas City, 336 F.2d 988 (1964), cert. den., 380 U.S. 914).

This Court in **Green** (**Green v. County School Board of New Kent County, Virginia**, 391 U.S. 430) took somewhat of a partial departure, while dealing in the context of a small, rural, two school system where freedom of choice had been ineffective.

Even there Petitioner's Counsel, Mr. Greenberg and Mr. Nabrit, who are also counsel for Petitioners here, said in their brief (page 14):

> "Prior to the relatively recent controversy concerning segregation in large urban systems, assignment by geographic attendance zones was viewed as the soundest method of pupil assignment. This was not without good reason; for placing children in the school nearest their home would often eliminate the need for transportation, encourage the use of schools as community centers and generally facilitate planning for expanding school population."

Subsequent to **Green** the original doctrine from **Brown I** has been reasserted, by the Sixth Circuit:

> "It is submitted that the Constitution imposes no such duty. Appellants are not the only children who have constitutional rights. There are Negro, as well as white, children who may not want to be bussed away from the school districts of their residences, and they have just as much right to attend school in the area where they live. They ought not to be forced against their will to travel out of their neighborhoods in order to mix the races." **Deal v. Cincinnati Board of Education**, 419 F.2d 1387 (C.A. 6th 1969).

This is reminiscent of the language of Mr. Justice Frankfurter in **Cooper v. Aaron**, 358 U.S. 1.

> "The use of force to further obedience to law is in any event the last resort, and one not congenial to the spirit of our Nation."

The criterion of race in the assignment of public school students simply is improper under our governmental system.

> "The genius of the American political tradition, in its best sense, in relation to race is that it dictates that racial criteria are not legitimate in the operation of governmental facilities and should be rigorously eschewed. To bring racial criteria in by the front door, so to speak, even before throwing them out the back, represents, in my opinion, no real gain for the body politic and has potentially dangerous implications for the future."*67

The Petitioners' position also endangers the fundamental aim of the public school system. Clearly there is no redeeming value in integration compelled at the expense of education. The following statement gives some perspective to the problem:

> "(T)he purpose of schools is education and . . . no child is being served if education is being made impossible. School authorities must make clear when they believe that pupils are being used as pawns in the struggles of adults. The question to be asked about all proposals is whether they will contribute to the education of the pupils involved, not whether they will contribute to other goals, even desegregation."*68

Notwithstanding **Green, Deal** is entirely justified in view of this Court's later Opinion in **Alexander** where this court

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*67 Gordon, Assimilation in American Life: The Role of Race, Religion and National Origins, p. 250 (1964).

*68 DeFacto Segregation, Educational Policies Commission of the NEA and the American Association of School Administrators, NEA Journal, p. 36 (October 1965).

again restated the constitutional mandate originally set forth in Brown in terms of a unitary school system,

> "within which no person is to be effectively excluded from any school because of race or color."

Brown I and II, Green and **Alexander**, and essentially everything in between, excepting **Jefferson** and the line of Fifth Circuit cases that followed the **Jefferson** doctrine (but for a more current expression by the Fifth Circuit see **Ellis v. Board of Public Instruction of Orange County**, 423 F.2d 203) have an undeniably common view of the constitutional obligation of school systems. It is that under our constitution education is a right which must be made available to all on an equal basis; that students both black and white must be assigned to schools on a non-racial basis; that school systems must be operated on a unitary basis within the framework of which no person is totally compelled to attend any school because of race or color, nor effectively excluded from any school because of race or color.

If our position in this regard is not sound, then the Court's have come full-cycle from **Brown**: There, racial classifications were prohibited by the Constitution; now, they are held to be demanded by the same Constitution. If the rule is to be that racial classifications are illegal except those looked upon with favor by the Court, then it is no longer the Constitution which is the Supreme law of the land, but the transient views of the individuals who happen to occupy judicial office at any particular time.

IV

Under the Constitution of the United States, Do White Public School Students Have the Same Right or an Equal Right as Do Black Public School Students, to the Benefit and Protection of the Constitution and of the Laws of the United States; Specifically the Equal Protection Clause of the Fourteenth Amendment, and the Civil Rights Act of 1964. If They Do, Then Is It Not Constitutionally Sufficient That Public School Systems Assign Students to Schools on the Basis of Attendance Zones That Are Fairly Drawn to Normal Standards of Educational Soundness and Upon the Basis of Non-Racial Criteria, in Order to Produce as Nearly as Possible a System of Unitary Neighborhood Schools.

From the very beginning of this litigation, this School Board and its professional staff have voiced their preference for and desire to maintain a system of neighborhood schools, because of their sincere and unbending belief that such a system is most beneficial for all children of the system, black and white. Beneficial not only from a purely educational standpoint, but also from the standpoint of the general support for the school system when children and parents identify themselves with the neighborhood school and its related programs—recreation, social events, scouting activities, and a multitude of other things. Destruction of this identification leads inevitably to just exactly the sort of system-wide unrest and chaotic atmosphere now prevalent in the Mobile County Public School System; and ultimately this leads to a total withdrawal of public confidence in and concern for the quality of the entire school system and public education in general. Some systems have already experienced this withdrawal of support.*[69]

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*[69] From the Amicus Curiae brief of the Chattanooga Board of Education in Swann (No. 281) we notice that the people of Chattanooga have three times voted down education bond issues totaling thirty six million dollars.

This school system is now feeling it. Others will soon experience it.

From time to time this School Board has yielded to public pressure to seek freedom of choice (after the Courts had initially injected the concept into the focus of public attention); and from time to time this Board has yielded to the mandate of the Court to employ a system of student assignment that it has known to depart from the neighborhood school concept, and to be educationally unsound, such as the plan of student assignment now in implementation for the 1970-71 school year. But throughout, the Board and its professional staff have held the conviction that neighborhood schools with students assigned on a non-racial basis, coupled with a majority to minority transfer provision, is not only educationally sound, but constitutionally sufficient.

The gist of Petitioners' argument is that a public school system is segregated as long as there remains any school which is not attended by both white and black children. This argument was rejected by the three judge court on the remand in **Brown v. Board of Education of Topeka**, 139 F. Supp. 468, 470 (d. Kan. 1955);

> "It was stressed at the hearing that such schools as Buchanan are all-colored schools and that in them there is no intermingling of colored and white children. Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color."

The same point is made in **Downs v. Board of Education of Kansas City**, 336 F.2d 988, where the use of geographic attendance zones had resulted in some schools having an all white and some schools having an all black

enrollment. The appellants' argument that this result rendered the zone plan unconstitutional was rejected by the Court, (p. 998).

> "Appellants also contend that even though the Board may not be pursuing a policy of intentional segregation, there is still segregation in fact in the school system and under the principles of Brown v. Board of Education, supra, the Board has a positive and affirmative duty to eliminate segregation in fact as well as segregation by intention. While there seems to be authority to support that contention, the better rule is that although the Fourteenth Amendment prohibits segregation, it does not command integration of the races in the public schools and Negro children have no constitutional right to have white children attend school with them." (Footnote omitted) (Citations omitted) (Emphasis added)

At one time this seems also to have been Petitioners view:

> "moreover, the jury discrimination precedents may be recalled: Bias may be presumed from a consistently segregated result; a token number of Negroes may be legally equivalent to none. If, however, in education there were complete freedom of choice, or **geographic zoning**, or any other non-racial standard, and all Negroes still ended up in certain schools, there would seem to be no constitutional objection." (Greenberg, Race Relations and American Law, page 239) (1959) (emphasis supplied)
>
> "Prior to the relatively recent controversy segregation in large urban systems, assignment by geographic attendance zones was viewed as the soundest method of pupil assignment. This was not without good reason; for placing children in the school nearest their home would often eliminate the need for transporta-

tion, encourage the use of schools as community centers and generally facilitate planning for expanding school populations." (Brief for Petitioner in **Green**, No. 695, October term, 1967)

Deal v. Cincinnati Board of Education, 324 F.2d 209 (6th Cir. 1966) succinctly stated the case for neighborhood schools:

> "Appellants, however, pose the question of whether the neighborhood system of public placement, fairly administered without racial bias, comports with the requirements of equal opportunity if it nevertheless results in the creation of schools with predominantly or even exclusively Negro pupils. The neighborhood system is in wide use throughout the nation and has been for many years the basis of school administration. This is so because it is acknowledged to have several valuable aspects which are an aid to education, such as minimization of safety hazards to children in reaching school, economy of cost in reducing transportation needs, ease of pupil placement and administration through the use of neutral, easily determined standards, and better home-school communication."

Subsequently this was reaffirmed by the Sixth Circuit in **Deal v. Cincinnati Board of Education**, supra. (1969); and notwithstanding **Jefferson**, the Fifth Circuit has also recently approved the neighborhood school concept, in **Ellis** supra, and approximately twenty other cases within the past nine months.

The neighborhood school concept also has the endorsement of the Executive Branch of the Government. In his policy statement of March 24, 1970, entitled **SCHOOL DESEGREGATION: A Free and Open Society** (116 Cong. Rec. S4351, Daily Ed., March 24, 1970), the President of

the United States addressed himself at length and in depth to the important role that the neighborhood school plays in the education of our public school children. He said in part:

> "The neighborhood school will be deemed the most appropriate base for such a (unitary) system."
> "Transportation of pupils beyond normal geographical school zones for the purpose of achieving racial balance will not be required."

The decisions by this Court in **Brown I** and **II**, **Cooper v. Aaron**, **Rogers v. Paul**, **Green** and **Alexander v. Holmes** are all consistent with the neighborhood school concept.

Brown forbade the use of racial criteria in the assignment of students. **Cooper v. Aaron** and **Rogers v. Paul** were essentially of the same import. **Green** restated in a different context the basic proposition that school boards are required by **Brown II**,

> "to effectuate a transition to a racially nondiscriminatory school system."

Alexander again restated the prohibition against the exclusion of students from schools on the basis of racial criteria, this time in the context of a "unitary" school system. The **Alexander** definition does not prohibit all exclusion—only invidious ones based on race or color. There are any number of reasons why a child can fairly be required to attend one school instead of another; capacity, distance, cost, disruptions, location of residence, age, safety, administrative problems, educational considerations and a host of other factors that have absolutely nothing to do with his race or color. All consistent with the neighborhood school concept.

Deal v. Cincinnati Board of Education, supra, at 1391-92 (6th Circ. 1969) addressed itself to this matter:

"It is the contention of appellants that the Board owed them a duty to bus white and Negro children away from the districts of their residences in order that the racial complexion would be balanced in each of the many public schools in Cincinnati. It is submitted that the Constitution imposes no such duty. **Appellants are not the only children who have constitutional rights.** There are Negro, as well as white, children who may not want to be bussed away from the school districts of their residences, and they have just as much right to attend school in the area where they live. They ought not to be forced against their will to travel out of their neighborhoods in order to mix the races." (Emphasis added.)

The District Judge in **Ross v. Eckels, Houston Independent School District,** supra, raised this question.

"Our hypothetical student well might say to the Superintendent of Instruction, 'You are excluding me from School A, two blocks from my home, because I am black, and for no other reason. How can you do this when the Supreme Court of the United States in its latest pronouncement on the subject imposes on you the duty to operate as (a) unitary school system **within which no person is to be effectively excluded from any school because of race or color?**' I would be interested to know how this question would be answered." (Emphasis added)

The only view opposite to this is the one stated rather cryptically by one three judge panel of the Fifth Circuit in **United States v. Indianaola Municipal Separate School District,** 410 F.2d 626:

". . . we are firm that a point has been reached in the process of school desegregation where it is not the spirit but the bodies that count."

Surely this cannot be! How can this be squared with **Brown I** which stated that education is:

> "a right which must be made available to all on equal terms" . . . and . . . "Public Education is perhaps the most important single function of local government."

Quality Public Education as an American Institution and the philosophy of Petitioners accurately reflected by the quotation above from **United States v. Indianola** are on a deadly collision course. Only one can survive.

The desire to have physically demonstrable evidence of the fact that a change has been made in a school has led to an emphasis upon the number of black students physically present within any educational setting. This is a part of the concept of the "numbers game" which is referred to frequently in writings relating to school desegregation. The number of black children physically present has come to be equated with the attainment of the ultimate objective. Judges and others have been searching for rules of conduct, a formula, or other yardsticks that could be applied in any given situation to determine whether or not a school district had met the minimum standards of the Fourteenth Amendment as interpreted by **Brown I** and **II**. The Courts have been placed under intense pressure with regard to desegregation, and in certain circuits as a result have had an intense motivation to evolve and fabricate orders and procedures that can be easily understood, and that can be evaluated by non-academic personnel. This has caused the remedy to be reflected in the "numbers game", in statistical information, with no regard for the educational environment or the classroom atmosphere essential to educational opportunity.

What impact will there be upon black pupils if they are aware of the fact that the only reason why they are sitting alongside white students is because of the presence of a governmental force in some form requiring them to remain where they are? If desegregation is only possible under these circumstances have we not allowed an obsession with the numbers game to steer us away from the basic constitutional right that got us here in the first place?

What degree of detriment to a public school system is acceptable in order to achieve mathematical racial balance? Are we really to the point where it is not the spirit, but the bodies that count?

Presumably, it is the common goal of all to provide the best possible education for each and every child within our public school systems. Are there really no constitutionally permissible alternatives to the present juggling about of pupils and teachers (without any apparent regard for their highly individualized educational needs, goals and desires) simply to achieve a well-blended color scheme? Is this "equal educational opportunity"?

Must all opportunity for innovation and improvement in public education be sacrificed to ever higher levels of racial balance? Are the fundamental rights of parenthood of which this Court so eloquently spoke in **Pierce v. Society of Sisters**, 268 U.S. 510, 534-35 (1925), and **Meyer v. Nebraska**, 262 U.S. 390, 399-400 (1923), to be discarded in obedience to the notion that those who govern care more for children than those who gave them life? We think it a singular as well as tragic commentary on our times that these questions of basic human liberty need even be asked.

We agree with the President, Mr. Justice Marshall and Mr. Greenberg, that the assignment of students to schools on a non-racial basis is constitutionally sufficient, that the transportation of pupils beyond normal geographic school zones for the purpose of achieving racial balance should not be required and that the neighborhood school is the most appropriate base for the unitary school system.

CONCLUSION

Public education is in deep trouble, not only in the south, but in the country as a whole. With respect, the lion's share of the problem emanates from the fact that the Federal Courts have literally assumed the responsibility of operating the local school systems, a task for which they are by nature, experience, temperament and ability, unbelievably ill-equipped.

Nor do those upon whom the courts have relied for assistance, the Justice Department and HEW, bring any improvement to the situation.

Perhaps there is no better illustration of this Federal inability to run a local school system than is presented by this very case, where for all practical purposes, for the past four years, the local School Board has been nothing more than a powerless administrative extension of the Federal Courts.

Somewhere, somehow, we must return to a recognition of the simple fact that the vital, essential purpose of public education and public school systems, is **education** and not **integration.**

Many well-meaning people apparently believe that the solution to all of the racial ills of the country is to compel

people to associate. But this assumption has proven false. Compelling people to associate against their will does not lessen, but only exacerbates, racial tensions. However desirable the goal of inter-racial association may appear to some, we submit that it cannot be achieved by measures that violate the Constitution. Desirable ends do not justify unconstitutional means, whatever the urgency of the situation, and this proposition applies with just as much force to the federal courts and the executive department as it does to the lowest county or city official.

Even for those who find basis to disagree with this basic position, there still remains the further inscrutable fact that if **public education** is to survive it can no longer be used as the vehicle for this philosophy of association by compulsion. We say, if public education is to survive; perhaps to some this is not an important criteria!

The quest for racial balance on the one hand and quality education for all children black and white on the other, are on a deadly collision course. One will not survive their ultimate meeting. For those who demand racial balance, busing for the sake of busing, the vindication of one constitutional right at the expense of another, it is pertinent to inquire as to where their motivation may lie. Are they interested in quality education, or are they interested in revenge and retribution.

We respectfully urge this Court to approve as a general principle the constitutional validity of the neighborhood school concept, and the constitutional invalidity of the arbitrary assignment of public school students and teachers on the basis of a racial ratio or quota, or in pursuit of a racial balance.

We respectfully request that this case be remanded to the District Court for the formulation of a revised desegregation plan consistent with these principles.

Respectfully submitted

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HON. JACK EDWARDS, Member of Congress
Washington, D. C.

Student Transfer Policy

Upon written request of a parent or guardian, students may be granted transfer from the school in which they are enrolled to any school within their grade level.

1. Such transfers may be granted for any of the following reasons provided space is available and provided that such transfer does not require special transportation arrangements at additional cost to the School Board.

APPENDIX

   a. Transfers shall be granted to students requiring a course of study not offered at the school in which they are enrolled or for other sound educational reasons.

   b. Transfers shall be granted to students in case of extreme hardship or for other good cause determined to be similar in character.

   c. Transfers shall be granted to students attending a school in which his race is in the majority to a school where his race is in the minority with transportation provided by the School Board if desired.

We respectfully request that this case be remanded to the District Court for the formulation of a revised desegregation plan consistent with these principles.

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Washington, D. C.

APPENDIX

STUDENT TRANSFER POLICY

Upon written request of a parent or guardian, students may be granted transfer from the school in which they are enrolled to any school which serves their grade level.

I. Such transfers may be granted for one of the following reasons provided space is available and provided that such transfer does not require special transportation arrangements by the School Board.

   A. Transfer shall be granted to students requiring a course of study not offered at the school in which they are enrolled or for other sound educational reasons.

   B. Transfers shall be granted to students in case of extreme hardship or for other good cause non-racial in character.

II. Transfers shall be granted to students attending a school in which his race is in the majority to a school where his race is in the minority with transportation provided by the School Board if desired.

APPENDIX I

PROJECTED ENROLLMENT DATA

UNDER ZONES LINES

HIGH SCHOOL

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
Rain	7-12	1143	112	1150	97	1255	868
Williamson	10-12	824	491	880	471	1315	1305
Murphy	10-12	1300	1027	1643	1761	2327	2813
Toulminville	10-12	247	420	9	740	667	609
Blount-Carver	9-12	1022	1693	854	1846	2715	2697
Vigor-Bienville	9-12	1000	1425	1134	1211	2425	2204
Shaw	9-12	1312	237	1250	240	1549	1015
Davidson	9-12	2201	80	2302	72	2281	1943

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
B. C. Rain	7-12	1143	112	1150	97	1255	868
Banes	6-9	770	220	1292	977	990	1148
Hall	6-9	336	910	1292	977	1246	1224
Dunbar	6-9	170	770	181	985	947	1064
Central	6-9	387	1164	468	1260	1551	1508
Washington	6-9	748	709	1170	1716	1457	1015
Phillips	6-9	417	695	1170	1716	1112	980
Trinity Gardens	6-8	320	540	380	690	861	868
Prichard	6-8	220	458	240	410	678	615
Mobile County Training	6-8	333	885	432	859	1218	1232
Clark	6-8	703	846	536	948	1549	1392
Scarborough	6-8	884	11	638	77	895	896
Millsdale	6-8	451	210	431	217	661	764
Azalea Road	7-8	996	38	1039	38	1034	986
Eight Mile *	1-8	549	110	280 *	66 *	659	598

* District Court plan grade structure is 1-8 and the Fifth Circuit's Plan grade structure is 1-6.

NAME OF SCHOOL	GRADE	U. S. DISTRICT COURT PLAN		FIFTH CIRCUIT PLAN		TOTAL UNDER DISTRICT COURT PLAN	PERMANENT CAPACITY
		WHITE	NEGRO	WHITE	NEGRO		
South Brookley	1-6	490	71	502	71	561	408
Williams	1-6	561	45	571	43	606	408
Morningside	1-5	672	0	631	0	672	544
Maryvale	1-5	402	257	441	117	659	544
Craighead	1-5	300	506	347	489	806	850
Council	1-5	40	427	4	391	467	544
Arlington	1-5	163	178	160	170	341	476
Caldwell	1-5	87	431	0	350	518	510
Leinkauf	1-5	118	393	273	165	511	442
Owens	1-5	2	1300	2	1414	1302	1428
Old Shell Road	1-5	492	7	332	295	499	476
Woodcock	1-5	255	0	424	167	255	570
Hertz	1-5	415	110	498	104	525	510
Fonville	1-5	37	787	0	1000	824	1088
Westlawn	1-5	384	0	532	0	384	510
Crichton	1-5	379	329	438	348	708	714
Stanton Road	1-5	5	826	6	900	831	1020
Frazier	1-5	0	1120	10	1022	1120	1156
Grant	1-5	30	850	15	1285	880	1122
Glendale	1-5	65	480	434	931	545	884
Palmer	1-5	235	435	434	931	670	568
Whitley	1-5	261	314	216	481	655	578
Robbins	1-5	0	775	638	855	775	850
Hamilton	1-5	630	15	638	855	645	646
Thomas	1-5	180	95	180	95	275	272
Whistler	1-5	181	205	181	205	386	510
Chickasaw	1-5	443	0	473	100	443	612
Eight Mile *	1-8	549	110	280	66 *	659	598
Indian Springs **	1-6	445	15	535	11	460	408
Orchard	1-5	714	161	754	113	875	816
Forest Hill	1-5	624	0	560	0	624	578
Will	1-5	534	299	657	175	833	816
Austin	1-5	488	10	396	22	498	408
Dickson	1-6	726	5	835	193	731	782
Fonde	1-6	773	13	679	11	786	850
Shepard	1-6	415	29	409	29	444	544
Dodge	1-6	503	50	675	65	553	816
Gorgas	C L O S E D						

* District Court plan grade structure is 1-8 and the Fifth Circuit plan is grade structure 1-6.

** Fifth Circuit plan made no provision for 6th grade at Indian Springs.

FILED
OCT 6 1970
E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 436

BIRDIE MAE DAVIS, et al.,
Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.,

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF

For the Little Rock School District and the North Little Rock School District, Amici Curiae

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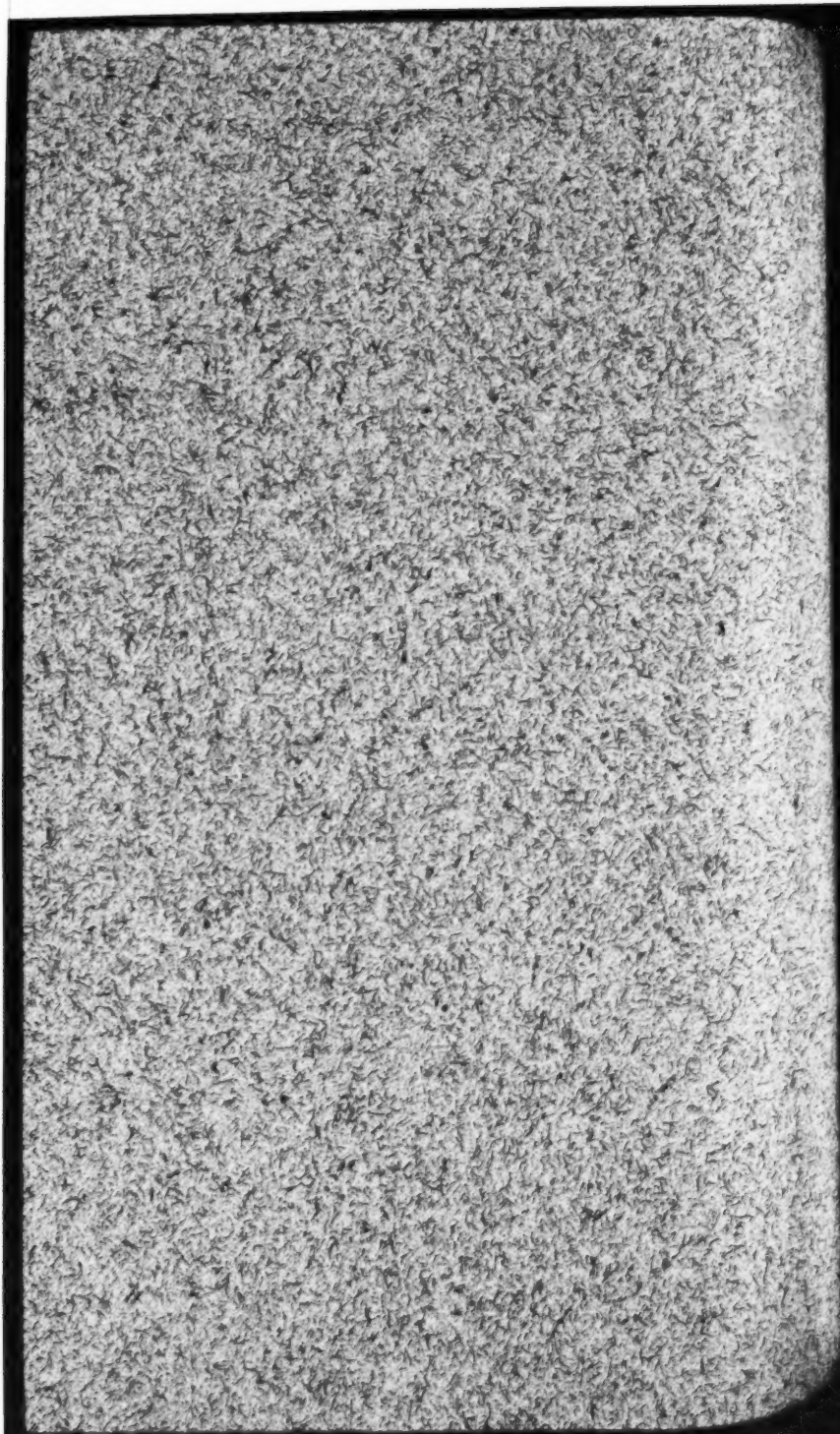

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AUTHORITY TO FILE

The Little Rock School District and the North Little Rock School District are public bodies corporate created under the laws of Arkansas. Ark. Stats. 80-402. They are political subdivisions of the State of Arkansas and this brief is sponsored by their authorized attorney. This brief is therefore filed pursuant this Court's Rule 42 (4).

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On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit

BRIEF

For the Little Rock School District and the North Little Rock School District, Amici Curiae

INTEREST OF AMICI CURIAE

The Little Rock and North Little Rock school districts, urban school districts serving a total of about 37,000 students, have attempted both compliance with their obligations arising from **Brown v. Board of Education,**[1]

[1] 349 U. S. 294.

and preservation of a viable and effective educational program, by assignment of students to schools in the neighborhoods where they reside without racial classifications of any kind. Both districts have been frustrated in such efforts by federal court orders requiring arbitrary manipulations of student assignments directed toward achieving greater degrees of "racial balance" within the various schools. Each is presently subject to a district court order pertaining to the expenditure of school funds to transport certain students to schools distant from their homes,[2] and each is now before the Court of Appeals for the Eighth Circuit[3] defending claims that the Constitution requires abandonment of the neighborhood school concept by these districts because residential patterns result in some schools being "racially identifiable."

The Little Rock district has been required to bear the crushing burden of constantly defending in federal court its desegregation operations since 1956, and during that period has undergone multiple reorganizations to comply with the changing views of those courts respecting what the Constitution requires. In its most recent decision pertaining to this district announced May 13, 1970,[4] the Court of Appeals for the Eighth Circuit reversed a district court order approving residential zoning as the method of school assignment, and without furnishing any guidelines as to what would suffice directed the school authorities to do something else. The court was divided and the dissenting judges observed at page 1048:

> "Absent authoritative guide lines from the Supreme Court as to the constitutional status of neighborhood

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[2] The district court's orders require the Little Rock district to bear this expense and strongly suggest that the North Little Rock district should do so.

[3] Oral arguments set for October 14, 1970.

[4] **Clark v. Board of Education of Little Rock School Dist.**, 426 F. 2d 1035 (8 Cir., 1970).

schools in metropolitan districts, the Board upon remand would be at a loss to know what course to take in devising a desegregation plan. The remand for the proposal and consideration of a new plan for desegregation, absent more specific guide lines, would only create confusion and lack of stability in the Little Rock school system."

A petition for certiorari has been filed here (O. T., 1970, No. 409), but has not been passed upon by this Court at the time of preparation of this brief.

The foregoing demonstrates the interest of these districts in this case and those with which it has been consolidated. This brief is filed in support of the constitutionality of the neighborhood school concept.

ARGUMENT

In Section IV of their brief petitioners urge the Court to declare, as a principle of constitutional law, that "**Every** black child is to be free from assignment to a 'black' school." Thus, the Court is no longer implored to give vitality to the promise of the Equal Protection Clause that all citizens are to enjoy equal rights without regard to race. The Court is now asked to return to racial classification to measure legal rights—a principle it deliberately and unanimously rejected in **Brown.**

The demands of counsel for petitioners for ever-changing construction of the Constitution with respect to desegregation are placed in proper perspective when viewed against what they urged the Constitution meant the last time they were in court—and the times before that.

They now say the Constitution mandates racial balance. In the early 1950's when Mr. Justice Marshall made the principal argument in **Brown,** they urged only that the state-imposed (required or permitted by statute and rigidly enforced by local school authorities) segregation of the races was in violation of the Constitution.[5] This Court agreed—and that was all that was condemned in **Brown.**

---

[5] Argument on December 9, 1952 in No. 101, October Term, 1952:

> Mr. Marshall: "But if this Court would reverse and the case would be sent back, we are not asking for affirmative relief. That will not put anybody in any school. The only thing that we ask for is that the state-imposed racial segregation be taken off, and to leave the county school board, the county people, the district people, to work out their own solution of the problem to assign children on any reasonable basis they want to assign them on." pp. 23-4.
>
> Mr. Marshall: "But my emphasis is that all we are asking for is to take off this state-imposed segregation. It is the state-imposed part of it that affects the individual children." p. 28.

The above reference is to the Transcript of Ward and Paul contained in the library of this Court.

As late as 1959, the principal counsel for petitioners in this case, and Mr. Justice Marshall's successor as chief counsel for the N. A. A. C. P. Legal Aid and Defense Fund, wrote:

> "Moreover, the jury discrimination precedents may be recalled: Bias may be presumed from a consistently segregated result; a token number of Negroes may be legally equivalent to none. If, however, in education there were complete freedom of choice or geographical zoning, or any other nonracial standard, and all Negroes still ended up in certain schools, there would seem to be no constitutional objection."

Jack Greenberg, **Race Relations and American Law**, Columbia University Press, New York (1959), pp. 239-40.

History, logic and the overwhelming weight of authority support the view that the Constitution, as construed in **Brown**, does not require affirmative race mixing nor does it condemn a school attended solely by Negroes.

As early as 1955, on remand of this Court's decision, **Brown v. Board of Education**, 139 F. Supp. 468 (D. C. Kan. 1955), rejected an assertion that the Constitution was violated by the maintenance of a school attended solely by Negroes, saying:

> "It was stressed at the hearing that such schools as Buchanan are all-colored schools and that in them there is no intermingling of colored and white children. Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.
>
> If it is a fact, as we understand it is, with respect to Buchanan School that the district is inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live."

This view has been approved and adopted by the Court of Appeals of every circuit where there has been significant litigation pertaining to school desegregation.[6]

It was not until **United States v. Jefferson County Board of Education**, 372 F. 2d 836 (5th Cir. 1966), on rehearing en banc 380 F. 2d 385 (5th Cir. 1967), cert. denied, 389 U. S. 840, that a different result was obtained. In that case, the Fifth Circuit reversed its former holdings and stated that:

> "As we see it, the law imposes an absolute duty to desegregate, that is, disestablish segregation. And an absolute duty to integrate, in the sense that a disproportionate concentration of Negroes in certain schools cannot be ignored; racial mixing of students is a high priority education goal." 372 F. 2d at 846-847, n. 5.

The decision was confirmed on rehearing en banc by a court divided 8-to-4. 380 F. 2d 385 (5th Cir. 1967).

After **Jefferson** there was chaos.[7] While most of the district courts and courts of appeals exhibited a disin-

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[6] **Springfield School Committee v. Barksdale**, 348 F. 2d 261 (1st Cir. 1965); **Jeffers v. Whitley**, 309 F. 2d 621, 627 (4th Cir. 1962); **Bradley v. School Board of City of Richmond**, 317 F. 2d 429, 438 (4th Cir. 1963), rev'd. on other grounds 382 U. S. 103; **Swann v. Charlotte-Mecklenburg Board of Education**, 369 F. 2d 29 (4th Cir. 1966); **Bowman v. County School Board**, 382 F. 2d 326 (4th Cir. 1967); **Avery v. Wichita Independent School District**, 241 F. 2d 230, 233 (5th Cir. 1957); **Borders v. Rippy**, 247 F. 2d 268, 271 (5th Cir. 1957); **Deal v. Cincinnati Board of Education**, 369 F. 2d 55 (6th Cir. 1966), cert. denied, 389 U. S. 846; **Bell v. School Board**, 324 F. 2d 209 (7th Cir. 1963), cert. denied, 377 U. S. 924; **Clark v. Board of Education**, 369 F. 2d 661 (8th Cir. 1966), on rehearing 374 F. 2d 569 (8th Cir. 1967) and **Downs v. Board of Education**, 336 F. 2d 988 (10th Cir. 1964), cert. denied, 380 U. S. 914.

[7] A perceptive observation concerning **Jefferson County** appears in **Moses v. Washington Parish School Board**, 276 F. Supp. 834, 846-7 (D. C. La. 1967), where the court noted:

> "De jure segregation can be eradicated without ordering a wholesale mixing of the races and making that order a

clination to adopt its rationale, a sufficient number of them attempted to apply their interpretation of its teachings that there followed three school years of confusion and utter lack of uniformity in the manner in which southern school districts were required to operate. The ground rules changed every year—sometimes in the middle of the academic year. And the school districts were required to totally subordinate concern for their educational programs due to diversion of their energy and resources to reorganization after reorganization to comply with the deluge of ever-changing court orders.

The result is that the two school districts filing this brief *amici curiae,* and the respondent school district, have been judicially required to abandon the neighborhood school concept in part and stand in immediate jeopardy of being ordered to abadon it *in toto.* Thus these districts are denied the right to assign their public school students as students are assigned, and have been for decades, by the vast majority of the nation's school districts.

Even in **Jefferson** it was noted that "The neighborhood school system is rooted deeply in American culture." 372 F. 2d 836, 879. The Sixth Circuit Court said in **Deal v. Cincinnati Board of Education,** 369 F. 2d 55 (6 Cir. 1966), cert. denied, 389 U. S. 847 (1967), at page 60:

> "The neighborhood system is in wide use throughout the nation and has been for many years the basis of school administration. This is so because it is acknowledged to have several valuable aspects which are an aid to education, such as minimization of safety hazards to children in reaching school, economy of cost in reducing transportation needs, ease of pupil

---

principle of constitutional law. And prejudice can be eroded and this nation united without dispensing with the legal and constitutional philosophy which is our unique and precious inheritance."

placement and administration through the use of neutral, easily determined standards, and better home-school communication."

The constitutionality of neighborhood school zoning plans has been upheld by many courts of stature although residential patterns produce racial imbalance in some of the schools. In addition to the decision of the Sixth Circuit Court in **Deal**, *supra*, and that of the Seventh Circuit Court in **Gary**, *infra*, see **Springfield School Committee v. Barksdale**, 348 F. 2d 261 (1 Cir. 1965); **Swann v. Charlotte-Mecklenburg Bd. of Ed.**, 369 F. 2d 29 (4 Cir. 1966); **Broussard v. Houston Ind. S. Dist.**, 395 F. 2d 817 (5 Cir. 1968), petition for rehearing en banc denied, 403 F. 2d 34 (5 Cir. 1968); **Downs v. Board of Ed. of Kansas City**, 336 F. 2d 988 (10 Cir. 1964).

Consistent with these court decisions, the Congress spelled out the national policy pertaining to racial considerations in public school assignment in unambiguous terms in the Civil Rights Act of 1964. The congressional intent is ably treated in the brief *amicus curiae* filed in **Swann v. Charlotte-Mecklenburg Board of Education** (O. T., 1970, No. 281) by Congressman Cramer and we add only a footnote here concerning the legislative history.[8]

---

[8] The legislative history establishes beyond doubt that it was the intention of Congress to adopt, and thus, confirm as the national policy, Judge Beamer's interpretation of the Constitution in **Bell v. School City of Gary, Ind.**, 213 F. Supp. 819 (N. D. Ind.), aff'd 324 F. 2d 209 (7 Cir. 1963), cert. denied, 377 U. S. 924. Senator Humphrey, manager of the Bill in the Senate, made this statement during the debate:

> "Judge Beamer's opinion in the Gary case is significant in this connection. In discussing this case, as we did many times, it was decided to write the thrust of the court's opinion into the proposed substitute." 110 Cong. Rec. 12715.

The "thrust" of the Gary decision was accurately described by Senator Humphrey to be:

> "I should like to make one further reference to the Gary case. This case makes it quite clear that while the Con-

There is absolutely no doubt that everyone involved in **Brown** contemplated that desegregation would involve attendance zones drawn without regard to race. This colloquy between Justice Frankfurter and Mr. (now Justice) Marshall during the argument of Brown on December 9, 1952 makes this clear:

"Justice Frankfurter: You mean, if we reverse, it will not entitle every mother to have her child go to a non-segregated school in Clarendon County?

Mr. Marshall: No, sir.

Justice Frankfurter: What will it do? Would you mind spelling this out? What would happen?

Mr. Marshall: Yes, sir. The school board, I assume would find some other method of distributing the children, a recognizable method, by drawing district lines."

* * * * * * *

"Mr. Marshall: I think, sir, that the decree would be entered which would enjoin the school officials from, one, enforcing the statute; two, from segregating on the basis of race or color. Then I think what ever district lines they draw, if it can be shown that those lines are drawn on the basis of color, then I think they would violate the injunction. If the lines are drawn on a natural basis, without regard to race or color, then I think that nobody would have any complaint.

For example, the colored child that is over here in this school would not be able to go to that school.

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stitution prohibits segregation, it does not require integration. The busing of children to achieve racial balance would be an act to effect the integration of schools. In fact, if the bill were to compel it, it would be a violation, because it would be handling the matter on the basis of race and we would be transporting children because of race. The bill does not attempt to integrate the schools, but it does attempt to eliminate segregation in the school systems." 110 Cong. Rec. 12717.

But the only thing that would come down would be the decision that whatever rule you set in, if you set in, it should not be on race, either actually or by any other way. It would violate the injunction, in my opinion.

Justice Frankfurter: There is a thing that I do not understand. Why would not that inevitably involve—unless you have Negro ghettoes, or if you find that language offensive, unless you have concentrations of Negroes, so that only Negro children would go there, and there would be no white children mixed with the, or vice versa—why would it not involve Negro children saying, 'I want to go to this school instead of that school'?

Mr. Marshall: That is the interesting thing in this procedure. They could move over into that district, if necessary. Even if you get stuck in one district, there is always an out, as long as this statute is gone."

* * * * * * * *

"Justice Frankfurter: I just wondered, in regard to this question that we are discussing, how what you are indicating or contemplating would work out in the District if tomorrow there were the requirement that there must be mixed groups.

Mr. Marshall: Most of the schools in the District of Columbia would be integrated. There might possibly be some in the concentrated areas up in the northwest section. There might be. But I doubt it. But I think the question as to what would happen if such decree was entered—I again point out that it is actually a matter that is for the school authorities to decide, and it is not a matter for us, it seems to me, as lawyers, to recommend except where there is racial discrimination or discrimination on one side or the other."

Transcript of Ward and Paul, pp. 23-28.

The other counsel aligned with Mr. Marshall in those cases agreed. Mr. Spottswood W. Robinson III arguing on behalf of the appellants in No. 191, O. T., 1952 urged:

> "Now, we submit that you cannot continue to discriminate against Negroes, or these Negro students; under the circumstances, what you do is, **you simply make all the facilities in the County available to all the pupils, without restriction or assignment to particular schools on the basis of race.**" (Emphasis supplied.)

Transcript of Ward and Paul, p. 22.

Mr. James M. Nabrit, Jr., arguing a year later on behalf of petitioners in No. 4, O. T., 1953 on December 9, 1953 described the relief sought as "a decree that these respondents be restrained from operating and managing these schools in the District of Columbia **on the basis of racial distinctions alone**" (emphasis supplied).
Transcript of Ward and Paul, p. 76.

A year and a half still later, Mr. Robert L. Carter arguing on behalf of petitioners in No. 1, O. T., 1954, on April 11, 1955 asserted that the decree to which he was entitled under **Brown I** was one that would require:

> "• • • the Topeka Board to cease and desist at once from basing school attendance and admission on the basis of race so that as of September, 1955 no child in Topeka would be going to school on the basis of race or color."

Transcript of Ward and Paul, p. 28.

On the same day Mr. George E. C. Hayes, arguing on behalf of petitioners in No. 4, O. T., 1954 read to the Court this policy that had been adopted by the District of Columbia Board of Education:

> "Attendance of pupils residing within school boundaries hereafter to be established, shall not be per-

> mitted at schools located beyond such boundaries except for the most necessitous reasons or for the public convenience, and in no event for reasons related to the racial character of the school within the boundaries in which the pupil resides."

Mr. Hayes then observed: "We read that to your Honors because we feel that is a very fine pronouncement of a policy." Transcript of Ward and Paul, pp. 54-5.

In his final argument in **Brown** on April 14, 1955 Mr. Justice Marshall was asked what would be required if the decree he sought were entered. He replied:

> "Well, I would say, sir, that the school board would sit down and take this position with its staff, administrative staff, superintendents, supervisors, et cetera. They would say 'the present policy of admission based on race, that is now gone. Now we have to find some other one.' The first thing would be to use the maps that they already have, show the population, the school population, then I would assume they would draw district lines without the idea of race but district lines circled around the schools like they did in the District of Columbia."

Transcript of Ward and Paul, pp. 430-1.

Counsel for petitioners have traveled a long and circuitious route from their arguments, accepted by this Court in **Brown,** that the Constitution condemns racial classifications in the public schools to the arguments now presented that the Constitution requires such classifications. If this Court should accept their proposition that the Constitution forbids "an identifiable racial minority school" then every bi-racial school district in the nation can expect to be hauled back to court every year *ad infinitum* for a determination of whether any of its schools meet that undefined standard, and the courts will labor with the same frustra-

tion trying to define that term as they have in trying to define the other glib rhetoric invented by counsel for petitioners such as "unitary schools", the "de jure-de facto" dichotomy, and "racial balance."

This Court clearly anticipated that its mandate in **Brown** would require establishment of residential attendance zones drawn without regard to race. Nothing it has said since has changed that, and the Constitution has not changed. The Congress has endorsed this method of school assignment and has condemned the assignment and transportation of students on racial classifications for the purpose of achieving racial balance.[9] Against this background it is almost incredible to read the arguments made here in support of what counsel for petitioners say the Constitution means now.

Counsel for petitioners argue in Section IV of their brief that the goal of judicial mandated abolition of all "black" schools must not be obstructed by consideration of the relevant facts. The factors they say must be judicially ignored are (a) transportation inconveniences and costs, (b) grade structures evolved by educators based on the experience of a century, (c) "neighborhood" associational values such as facilitation of P. T. A. meetings, and (d)

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[9] The views expressed by Judge Prettyman in **Carr v. Corning**, 182 F. 2d 14, 16 (D. C. Cir., 1950), that it is the legislative branch, not the judiciary, that is best equipped to resolve problems arising out of racial coexistence are still supported by unassailable logic. He said:

> "Since the beginning of human history, no circumstance has given rise to more difficult and delicate problems than has the coexistence of different races in the same area. Centuries of bitter experience in all parts of the world have proved that the problem is insoluble by force of any sort. The same history shows that it is soluble by the patient processes of community experience. Such problems lie naturally in the field of legislation, a method of susceptible of experimentation, of development, of adjustment to the current necessities in a variety of community circumstance."

concerns that children not be sent to school in a "strange or hostile" neighborhood.

We respectfully urge that the integrity of the public school systems of the nation is too important to be crippled with judicially mandated educational and sociological experiments. *A fortiori* the nation's schools cannot afford such experimentation which at its very inception requires rejection of methods and practices recognized almost universally to be indispensible to the prime mission of the schools which is education.

CONCLUSION

Amici curiae urge that the Court declare, as it did in **Brown,** that the Constitution forbids racial classifications in the public schools.

Respectfully submitted

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Supreme Court, U.S.
FILED
OCT 10 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 436

BIRDIE MAE DAVIS, *et al.*,

Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
213 U.S. COURT HOUSE & CUSTOM HOUSE
MOBILE, ALABAMA 36602

WILLIAM J. O'CONNOR
CLERK

OCTOBER 7, 1970

Mr. Michael Davidson,
Attorney at Law,
Suite 2030 - 10 Columbus Circle,
New York, N. Y. 10019

In Re: Civil Action No. 3003-63 - Birdie Mae Davis, et al v. Board of School Commissioners of Mobile County

Dear Sir:

Pursuant to your telephone request of yesterday, I hand you herewith the following:

1. Report filed October 2, 1970, by the Board of School Commissioners showing the number of non-conformers by school and race for Monday, September 28, 1970. This is in the form of a Memo dated September 28, 1970, from Mr. J. A. McPherson to Mr. Abram L. Philips.

2. Report filed October 2, 1970, by the Board of School Commissioners showing the enrollment for Monday, September 21, 1970. On Page 2 of this report you will find that the total enrollment is 69,697.

3. Report filed October 2, 1970, by the Board of School Commissioners showing the number of non-conformers for Thursday, September 17, 1970, and Friday, September 18, 1970.

4. Report filed October 2, 1970, by the Board of School Commissioners showing the enrollment figures for Monday, September 14, 1970.

5. Report filed October 2, 1970, by the Board of School Commissioners showing the cumulative enrollment figures for the second day, Thursday, September 10, 1970.

6. Report filed October 2, 1970, by the Board of School Commissioners showing the enrollment report for the first day of school, Wednesday, September 9, 1970.

I do not send to you the Report to the Court that was filed on September 25, 1970, setting out the administrative action taken by the Pupil Personnel Office with regard to each transfer application received and acted upon in the period between September 18 and September 24, 1970.

I do not send to you the Report to the Court that was filed on September 18, 1970, setting out action on student transfers with regard to each transfer application received and acted upon for the filing of transfer applications that closed on Friday, September 11, 1970.

The reason I do not send to you the two foregoing reports is that they are many, many pages and I do not think you would want to spend your money for this information. If I am in error, advise me.

You may send to me a check for $5.00 for the enclosures.

Very truly yours,

William J. O'Connor,
Clerk.

	Negro	White	Total
ADAMS	213	790	1003
ALBA	198	1415	1613
[illegible]			
AUSTIN	16	435	451
AZALEA ROAD	38	1046	1084
BAKER	95	1014	1113
BELSAW	220	25	247
[illegible]			
BLOUNT	2033	41	2074
BRAZIER	1039		1039
BROOKLEY	70	495	565
BURROUGHS	261	156	417
CALCEDEAVER		179	179
CALDWELL	408	7	415
[illegible]			
[illegible]			
CENTRAL	1508	17	1525
CHICKASAW	63	449	512
[illegible]			
CITRONELLE	436	693	1129
CLARK	94	1035	536	1571
COUNCIL	363	14	377
CRAIGHEAD	645	200	845
CRICHTON	184	373	557
DAUPHIN ISLAND		22	22
DAVIDSON	15	57	2836	2908

	Negro	White	Total
DAVIS	170	621	791
[illegible]			
DICKSON	164	582	750
DIXON	188	205	393
DODGE	67	710	777
DUNBAR	816	18	834
EANES	73	220	802	1022
EIGHT MILE	10	114	529	643
[illegible]			
EVANS	130	93	223
FONDE	4	722	730
FONVIELLE	919	2	921
FOREST HILL	4		513	513
GLENDALE	1	619	196	815
[illegible]			
GRAND BAY	141	662	803
GRANT	1087	4	1091
GRIGGS	7	43	292	335
HALL	954	102	1056
HAMILTON	101	192	300	592
HILLSDALE	961	467	721
HOLL. ISLAND	4	394	402
[illegible]			
INDIAN SPRINGS	14	504	522
LEE	105	636	741
LEINKAUF	72	930	1002

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED IN CLERK'S OFFICE
OCT 2 1970
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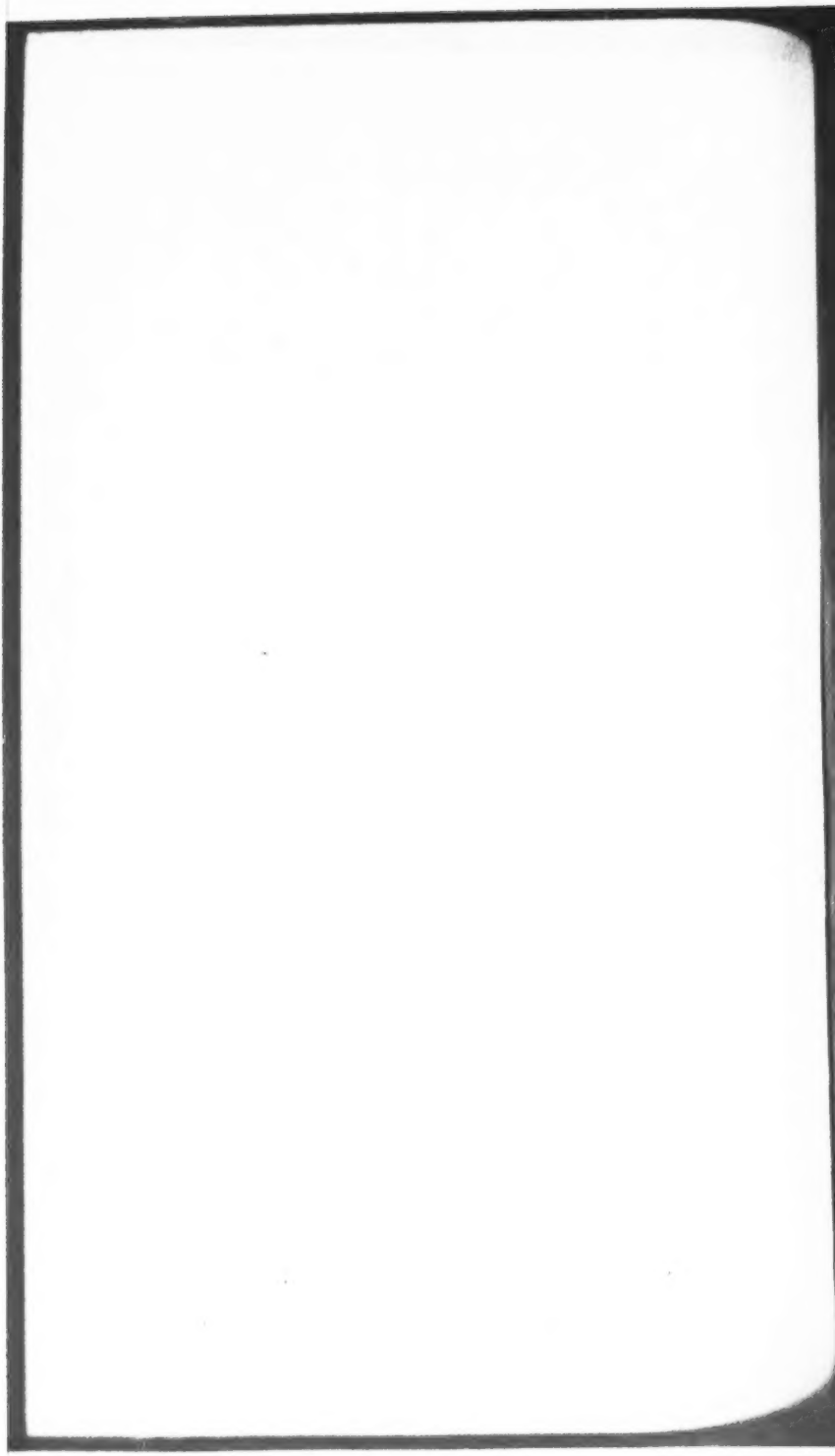
CLERK

SEPT. 21, 1970 - ENROLLMENT
(NINTH DAY)

	Non-Con.	Regular & Spec. Negro	White	Total		Non-Con.	Regular & Spec. Negro	White	Total
LOTT		165	404	569	THEODORE	6	370	1536	1906
MARYVALE		251	397	648	THOMAS		88	143	231
MERTZ	33		364	364	TOULMINVILLE		530	57	587
MOBILE CO. HIGH		248	585	833	TRINITY GDNS.		868	61	929
MOBILE CO. TRNG.		712	60	772	VIGOR	57	1464	1048	2512
MONTGOMERY	22	30	956	986	WASHINGTON		809	59	868
MORNINGSIDE	11		648	648	WESTLAWN	10		328	328
MT. VERNON		319	59	378	WHISTLER		188	173	361
MURPHY		1641	809	2450	WHITLEY		402	46	448
OLD SHELL ROAD	3	322	78	400	WILL		143	600	743
ORCHARD		110	724	834	WILLIAMS		53	600	653
OWENS		1476		1476	WILLIAMSON		630	357	987
PALMER		646	61	707	WILMER		58	350	408
PHILLIPS	2	859	354	1213	WOODCOCK		163	168	331
PRICHARD	8	580	199	779		471	31134	38563	69697
RAIN	4	118	1337	1455					
ROBBINS		694	8	702					
ST. ELMO		54	424	478					
SARALAND		127	628	755					
SATSUMA		203	972	1175					
SCARBOROUGH	5	14	820	834					
SEMMES	1	29	1037	1066					
SHAW		273	1353	1626					
SHEPARD		28	434	462					
STANTON ROAD		1019	3	1022					
TANNER WILLIAMS		4	358	362					

U. S. DISTRICT COURT
SOU. DIST. ALA.
FILED IN CLERK'S OFFICE
OCT 2 1970
WILLIAM J. O'CONNOR
CLERK



No. 436

Vide No. 281 for (3) related briefs.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DAVIS ET AL. *v.* BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 436. Argued October 13–14, 1970—Decided April 20, 1971

East of the major highway that divides the metropolitan area of Mobile, Ala., live 94% of the area's Negro students, and the schools there are 65% Negro and 35% white. West of the highway the schools are 12% Negro and 88% white. The Court of Appeals approved a desegregation plan which, like the District Court's plan, insofar as those areas were concerned, treated the western section as isolated from the eastern, with unified geographic zones and providing no transportation of students for desegregation purposes. Though some reduction in the number of all-Negro schools was achieved for the 1970–1971 school year, nine elementary schools in the eastern section (attended by 64% of all Negro elementary school pupils in the metropolitan area) were over 90% Negro, and over half of the Negro junior and senior high school students went to all-Negro or nearly all-Negro schools. With regard to the faculty and staff ratio in each of Mobile County's schools, the Court of Appeals directed the District Court to require the school board to establish "substantially the same" ratio as that for the whole district. *Held:*

1. The Court of Appeals decision dealing with the faculty and staff ratio is affirmed. *Swann* v. *Charlotte-Mecklenburg Board of Education, ante,* p. —, at 14–16. P. 2.

2. The Court of Appeals erred in treating the eastern part of metropolitan Mobile in isolation from the rest of the school system, and in not adequately considering the possible use of all available techniques to achieve the maximum amount of practicable desegregation. P. 4.

430 F. 2d 883 and 889, affirmed in part and reversed and remanded in part.

BURGER, C. J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 436.—October Term, 1970

Birdie Mae Davis et al., Petitioners, *v.* Board of School Commissioners of Mobile County et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[April 20, 1971]

Mr. Chief Justice Burger delivered the opinion of the Court.

Petitioners in this case challenge as inadequate a school desegregation plan for Mobile County, Alabama. The county is large and populous, embracing 1,248 square miles and the City of Mobile. The school system had 73,500 pupils in 91 schools at the beginning of the 1969 academic year; approximately 58% of the pupils were white and 42% Negro. During the 1967–1968 school year, the system transported 22,000 pupils daily in over 200 school buses, both in the rural areas of the county and in the outlying areas of metropolitan Mobile.

The present desegregation plan evolved from one developed by the District Court in response to the decision of the Court of Appeals for the Fifth Circuit in *Davis* v. *Board of School Commissioners*, 414 F. 2d 609 (CA5 1969), that an earlier desegregation plan formulated by the District Court on the basis of unified geographic zones was "constitutionally insufficient and unacceptable, and such zones must be redrawn." The Court of Appeals held that that earlier plan had "ignored the unequivocal directive to make a conscious effort in locating

attendance zones to desegregate and eliminate past segregation." *Id.*, at 610.

The District Court responded with a new zoning plan which left 18,623, or 60%, of the system's 30,800 Negro children in 19 all-Negro or nearly all-Negro schools. On appeal, the Court of Appeals reviewed all aspects of desegregation in Mobile County. Additional information was requested regarding earlier desegregation plans for the rural parts of the county, and those plans were approved. They are not before us now. The Court of Appeals concluded that with respect to faculty and staff desegregation the board had "almost totally failed to comply" with earlier orders, and directed the District Court to require the board to establish a faculty and staff ratio in each school "substantially the same" as that for the entire district. We affirm that part of the Court of Appeals' opinion for the reasons given in *Swann* v. *Charlotte-Mecklenburg Board of Education, ante,* at 14–16.

Regarding junior and senior high schools, the Court of Appeals reversed the District Court and directed implementation of a plan which was intended to eliminate the seven all-Negro schools remaining under the District Court's scheme. This was to be achieved through pairing and adjusting grade structures within metropolitan Mobile, without bus transportation or split zoning. The Court of Appeals then turned to the difficult problem of desegregating the elementary schools of metropolitan Mobile. The metropolitan area is divided by a major north-south highway. About 94% of the Negro students in the metropolitan area live on the east side of the highway between it and the Mobile River. The schools on that side of the highway are 65% Negro and 35% white. On the west side of the highway, however, the schools are 12% Negro and 88% white. Under the District Court's elementary school plan for the metropolitan

area, the eastern and western sections were treated as distinct, without either interlocking zones or transportation across the highway. Not surprisingly, it was easy to desegregate the western section, but in the east the District Court left 12 all-Negro or nearly all-Negro elementary schools, serving over 90% of all the Negro elementary students in the metropolitan area.

The Court of Appeals rejected this solution in favor of a modified version of a plan submitted by the Department of Justice. As further modified after a second appeal, this plan reduced the number of all-Negro or nearly all-Negro elementary schools from 12 to six schools, projected to serve 5,310 students, or about 50% of the Negro elementary students in the metropolitan area. Like the District Court's plan, the Court of Appeals' plan was based on treating the western section in isolation from the eastern. There were unified geographic zones, and no transportation of students for purposes of desegregation. The reduction in the number of all-Negro schools was achieved through pairing, rezoning, and adjusting grade structures within the eastern section. With yet further modifications not material here, this plan went into effect at the beginning of the 1970–1971 school year.

The enrollment figures for the 1970–1971 school year show that the projections on which the Court of Appeals based its plan for metropolitan Mobile were inaccurate. Under the Court of Appeals' plan as actually implemented, nine elementary schools in the eastern section of metropolitan Mobile were over 90% Negro as of September 21, 1970 (instead of six as projected), and they housed 7,651 students, or 64% of all the Negro elementary school pupils in the metropolitan area. Moreover, the enrollment figures indicate that 6,746 Negro junior and senior high school students in metropolitan Mobile, or over half, were then attending all-

Negro or nearly all-Negro schools, rather than none as projected by the Court of Appeals. These figures are derived from a report of the school board to the District Court; they were brought to our attention in a supplemental brief for petitioners filed on October 10, 1970, and have not been challenged by respondents.

As we have held, "neighborhood school zoning," whether based strictly on home-to-school distance or on "unified geographic zones" is not the only constitutionally permissible remedy; nor is it *per se* adequate to meet the remedial responsibilities of local boards. Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and noncontiguous attendance zones. See *Swann, ante,* at pp. 18–27. The measure of any desegregation plan is its effectiveness.

On the record before us, it is clear that the Court of Appeals felt constrained to treat the eastern part of metropolitan Mobile in isolation from the rest of the school system, and that inadequate consideration was given to the possible use of bus transportation and split zoning. For these reasons, we reverse the judgment of the Court of Appeals as to the parts dealing with student assignment, and remand the case for the development of a decree "that promises realistically to work, and promises realistically to work *now*." *Green* v. *County School Board,* 391 U. S. 430, 439 (1968).

It is so ordered.